H.R. 6149, THE COIN AND PRECIOUS METAL DISCLOSURE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE, AND CONSUMER PROTECTION

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

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SUBMITTED MATERIAL

H.R. 6149, THE COIN AND PRECIOUS METAL DISCLOSURE ACT

THURSDAY, SEPTEMBER 23, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND CONSUMER PROTECTION,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:07 p.m., in Room 2322 of the Rayburn House Office Building, Hon. Bobby L. Rush [Chairman of the Subcommittee] presiding.

Members present: Representatives Rush, Schakowsky, Sarbanes, Weiner, Barrow, Waxman (ex officio), Whitfield, Terry and Scalise.

Staff present: Timothy Robinson, Counsel; Michelle Ash, Chief Counsel; Michael Ostheimer, Counsel; Will Wallace, Special Assistant; Elizabeth Letter, Press Assistant; Kevin Kohl, Minority Professional Staff Member; Brian McCullough, Minority Senior Professional Staff Member, CTCP; and Shannon Weinberg, Minority Counsel, CTCP.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. The Subcommittee on Commerce, Trade, and Consumer Protection will now come to order. I want to extend my greetings to all who have gathered here.

The subcommittee is holding today's hearing on a bill, H.R. 6149, the Coin and Precious Metal Disclosure Act. The bill, which was introduced by Mr. Weiner of New York, will cover the sale of gold bullion, collectable coins made from other precious metals, and certain coins for investment purposes.

H.R. 6149 requires dealers prior to selling these items to make clear and conspicuous disclosures in writing and orally of all fees that consumers could incur in association with the sale of these covered items. The required disclosures would extend to the purchase price the melt value of the covered items and the reasonable resale price of the covered items to other dealers. Many of us have seen at least one of the television advertisements placed by Goldline International and others that tell consumers to strongly consider purchasing precious coins in order to preserve or protect the value of consumers' investments in precious metals. One of the risks that these advertisements and commercials cite repeatedly and consistently is that the U.S. government could potentially confiscate gold bullion. This is just one example, but I think is one of which many of you can relate.

These advertisements and the reported sale practices of these dealers concerned Congressman Weiner and myself enough that we sent a letter to Goldline asking the company to respond to a number of questions. Today the CEO of Goldline is with us as one of our six witnesses, and we are very appreciative of our witnesses. In our letter, we asked Goldline to reveal more to us about, one, the company's sales staff training; two, sales staff compensation, commission and incentive structures; three, the average differential in value between the sale prices of gold bullion, gold coins and how much Goldline would pay to purchase those items back from consumers. We also asked Goldline to tell us the following: whether it encourages its sales staff through training or in sales discussions to refer to government confiscation of gold when they speak to consumers, whether sales staff receive different commission percentages for selling bullion than for selling collectable coins, and what is that difference. Finally, we asked Goldline to tell us whether Goldline is required to be licensed or is qualified in any jurisdiction to act as an investment advisor.

And Mr. Carter, I want to please extend my thanks to you, and please thank your president and CEO for his prompt response to us in a letter, that I might add is gold embossed, that was dated August 12, 2010. That letter was useful to me and my staff as it better defined some of the terms and words that Goldline uses in his existing disclosures to consumers, and I would like to request unanimous consent for the entry of both letters, both mine and Mr. Weiner's letter to Goldline, and Goldline's response into the hearing record.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. I would also like to take this opportunity to request another unanimous consent, and that is for the entry of four more documents into the hearing record. One is a letter addressed to me from the National Consumers League dated September 21, 2010, supporting H.R. 6149. The second is a statement for the record on behalf of the Industry Council for Tangible Assets dated today, September 23, 2010. There is an additional letter from the Professional Numismatists Guild dated September 20, 2010, and finally, a letter from the American Numismatic Association dated September 21, 2010, addressed to myself and to Ranking Member Whitfield. Hearing no objection, these unanimous consent requests will be granted.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. I am very thankful to all of the witnesses for agreeing to share their valuable time with us in the interest of examining this bill and to making this bill a better bill.

With that, I yield back the balance of my time and now I recognize the ranking member of the subcommittee, Mr. Whitfield, for 5 minutes for the purposes of an opening statement.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. Well, thank you, Mr. Chairman, and today we do have a hearing on H.R. 6149, the Coin and Precious Metal Disclosure Act.

I might say that after reviewing information about the gold industry, we know that under current law certain fees and price disclosures are already required by the federal telemarketing sales rule. Now, this legislation would require many new conspicuous disclosures including fees, markups and reasonable resale and the melt value of the metal. I am particularly interested in hearing testimony on why reasonable resale and melt value information would benefit a customer and whether they are reasonable for a seller to disclose. Prices for many items including gold can fluctuate greatly day to day, and it would be problematic if legislation required an estimate that could mislead a consumer.

Moreover, it is not clear to me why the coin and precious metals sellers in the private sector should be singled out to disclose a resale value when it is not required of the federal government. For example, my staff went out today and purchased this from the United States Mint. It is Native American $1 coins. There are 25 of them in here. The cost of the roll is $35. But the melt value of the roll turns out to be in the markup of the gold compared to the melt value, there is a 2,393 percent markup on this from the federal government, and on this collective set of quarters that comes from the U.S. Mint, the retail value of this is $32.95 and yet the melt value of this is only $19.20. So even the U.S. government is going a tremendous job of marking up the price of their products as well.

One other aspect of this that does bother me a little bit is, I have read a number of articles in the news media about this hearing, and it is disheartening to see that certain political commentators are mentioned frequently in these articles. Glenn Beck's favorite gold company is getting called up to Capitol Hill for a grilling. Democrats on Capitol Hill have targeted a big advertising sponsor of Glenn Beck and other popular rightwing commentators. Congress will hold hearings Thursday about the practices of Goldline, the precious metal dealer, that is broadcast and advertises on popular conservative political personalities such as Glenn Beck, Mike Huckabee and Fred Thompson.

Now, hopefully that is not the reason we are having these hearings, but it is disheartening to see that kind of news coverage on it that a hearing might be held simply because someone is advertising on a conservative talk show host program.

But we do have some experts here today. We have people with Goldline. We have the FTC. We have some consumers who have been harmed by some of their purchases. So it is important that we have this hearing. We know that the Federal Trade Commission already does have expansive jurisdiction to tackle many consumer protection problems and they have their priorities, and I don't really believe that this is one of their priorities but I may be wrong.

Anyway, we look forward to the testimony of all the witnesses today, and I want to thank the chairman again for holding this hearing and giving us an opportunity to explore this issue.

[The prepared statement of Mr. Whitfield follows:]

Statement of the Honorable Ed Whitfield
Ranking Member, Subcommittee on Commerce, Trade, and Consumer Protection
Hearing on H.R. 6149, The Coin and Precious Metals Disclosure Act
September 23, 2010

- Thank you, Mr. Chairman, for holding today's hearing on H.R. 6149, The Coin and Precious Metals Disclosure Act

- Like many of my colleagues, I strongly support protecting consumers from unscrupulous marketers who use deceptive practices to make a sale, and I am pleased the FTC has established a record of bringing actions against such scam artists.

- With that said, after reviewing information about the gold industry, it is not clear to me that any new Congressional action is required.

    - Under current law, certain fees and price disclosures are already required by the federal Telemarketing Sales Rule.

    - H.R. 6149 would require many new conspicuous disclosures including fees, markups, and reasonable resale and melt value.

        - I am particularly interested in hearing testimony on why reasonable resale and melt value information would benefit a consumer and whether they are reasonable for a seller to disclose. Prices for many items – including gold – can fluctuate greatly day to day and it would be problematic if legislation required an estimate that could mislead a consumer.

        - Moreover, it is not clear why the coin and precious metals sellers should be singled out to disclose a resale value. If this is truly a valuable piece of information, why shouldn't it apply to all consumer purchases?

- Mr. Chairman, I strongly support oversight of markets that are broken and I believe Congress has an obligation to address those problems and protect consumers.

- With that in mind, I look forward to hearing from our distinguished witnesses why new Congressional action is needed to help regulate the gold industry when the Federal Trade Commission already has expansive jurisdiction to tackle many consumer protection problems.

    - We may not always agree on the solutions, but we can agree that the FTC is the expert regulatory agency and we should defer to their expertise in identifying the most pressing issues facing consumers today.

    - According to the FTC, their current consumer protection efforts are heavily prioritized on combating the prevalent foreclosure rescue and mortgage relief scams. I am concerned that we should not divert FTC resources from its priorities that will help the most consumers in this difficult economic environment.

- In closing, I would like to note my concern that this legislation does seem to focus a bit too closely on one particular company.

- Thank you again, Mr. Chairman, and I look forward to hearing from our distinguished guests.

Mr. RUSH. The Chair now recognizes the author of the legislation, Mr. Weiner of New York, for 2 minutes for the purpose of opening statement.

OPENING STATEMENT OF HON. ANTHONY D. WEINER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. WEINER. Thank you, Mr. Chairman. I appreciate the opportunity to hold this hearing.

You know, we are here talking about a classic consumer issue that affects those people in the middle class and those struggling to make it. This is exactly what this committee was empowered to deal with, and I am glad that we are taking up this important issue.

The television gold industry is an industry that is led by one particular company that has built up an industry on fear, lies and rip-offs. Fear of the impending collapse of our economy is virtually a staple of every single statement from the executives of Goldline and other companies that sell these products. They get people scared about their future. Then they quickly transition to a lie, that if you buy certain types of coins it is a good hedge against the downturn in the economy. Mr. Whitfield just held up some coins that he can freely buy, no scarcity whatsoever, as many as he wants. Yet the only value to the coins that are being sold is their scarcity. If not that, then the small amount of gold that is in that coin, and that leads us to the rip-off. Once people have been convinced by their fear and the lies to purchase these products, they are profoundly ripped off. They are products that it would take years if not a generation, if ever, to make any money back on almost irrespective of how high the marketplace rose.

They are finding themselves being sold a product that is supposed to hedge against the collapse of the dollar when in fact you would have to see years of continuing increases in gold prices in order to be able to make up your losses. I didn't make up this data. This is freely accessible to people. They can go take a look. The exact same products that are being sold by Goldline are being sold for a fraction of the price on the open market.

But let me tell you what this hearing is not about. It is not about whether you should buy gold. Some people say yes, some people say no. It is not about whether or not Glenn Beck is doing a disservice to his viewers for shilling for this company. That is his problem. That is Fox News's problem. They made a right decision by telling him he had to end his contractual obligation and be a spokesman for this company. This is, what is the right and wrong way for consumers to do it and should they be protected. Should middle-class Americans who are being exploited every single day by this company and this industry be stopped and protected by legislation, and that is what I hope we get to today.

Mr. RUSH. The Chair recognizes the gentleman from Louisiana, Mr. Scalise, for 2 minutes.

OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. SCALISE. Thank you, Mr. Chairman. I look forward to today's hearing and hearing from the witnesses, but it just seems rather odd that when we are sitting here and the country is asking Congress to be focusing on creating jobs, when unemployment is almost 10 percent, and you can see here from when President Obama took office to today we are almost hovering at 10 percent unemployment, the American people want us to be focusing on jobs. They want us to be focusing on controlling spending.

And so when you look at what is happening and why people across the country are so concerned about the direction of our country, a lot of people are going out and looking for other things to do. They are sitting on their money. They don't want to invest in the things that government has control over, so people have been buying gold. Now, you can see right here, this is a chart of the 5-year gold average over the last few years. When President Obama took office, you can see a trajectory going up. Now, I don't think there is any TV host that had anything to do with controlling the price of gold yet people are buying gold because they are scared to death about the spending that is going on in Washington. If you look at Moody's, the rating agency, Moody's is talking about downgrading the United States's debt rating. This is serious business, and it is because of the out-of-control spending in Washington. It is because of these policies like a government takeover of health care by the liberals running this Congress that people are so scared to death about what is happening in the country that they are buying gold. And so what is the answer of the liberals running Congress? It is to go beat up on the people selling gold instead of fixing the problems that are happening in our country, instead of addressing the problems with creating jobs, addressing the problems with out-of-control spending.

And so if you look at what is going on and why we are at a point now where we are looking at this legislation, it doesn't do anything to solve some problem that is out there. The FTC can address a problem. It has to do with politics. In fact, here is a letter from a sitting Member of Congress. It is nobody in this room. But it is a sitting Member of Congress who wrote a letter trying to raise money off of this issue, specifically mentioning the author of this bill in an attempt to raise money for campaign purposes. So yeah, there is politics going on here, but if we really were focused on things the American people want us to be focused on, we would be so concerned why so many people are buying gold since the day President Obama took office. It is because of the out-of-control spending and because of all these government takeovers and all the problems that are leading to higher unemployment.

We ought to be focused on creating jobs. We ought to control the spending in Washington, not beating up on the people selling gold to people who want to buy it.

Thanks, and I yield back.

Mr. RUSH. The Chair now recognizes the chair of the full committee, Mr. Waxman, for 5 minutes for the purposes of opening statement.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman.

I am interested in the hearing today. I want to find out what people who are experts in consumer protection think about this bill, whether it is needed. We do have a Federal Trade Commission and I am glad they are going to be testifying.

I do think that there is a very important role to protect consumers from unfair practices, but I must say after hearing Mr. Scalise's comment, the only politics I have heard injected is all the political statements he just made. If people want to buy gold for whatever reason, that is their business, but to insist they are buying gold because liberals have control of Congress, that seems to me a little farfetched. People can decide they want to have a greater diversity in their portfolio. They can decide to buy gold as a hedge against inflation. People can have an interest in investing in gold for whatever reason. That is their right. And in fact while other investments have declined in value, the price of gold has nearly doubled in the past 3 years. I don't think that is because Barack Obama is President of the United States unless that is the sales pitch that is made. I am not aware of it.

I also don't think it is appropriate to hold a hearing because this is a substance that is being advertised on Glenn Beck or Rachael Maddow or anybody else. The question is, are consumers being informed of the information that they are entitled to make the best judgment, and then quite frankly after people have their information, they may not still make the best judgment. A lot of people make mistakes. They don't read the information that is given to them. They don't pay attention to the whole other aspects that might be involved in investing decisions. But government can't tell people what to do. That is up to them.

So I am interested in what comes out of this hearing. I know we did have a bill that we passed out of the committee and I think out of the House dealing with whether purchasers of precious metals could melt down or destroy a consumer's jewelry or gold before receiving an affirmative acceptance of an offer to purchase the jewelry for a specific price. But this is a different issue. This is a question of how much we need to inform consumers and whether there is a problem sufficient for us to change federal law to do that.

I thank you for the hearing, and it should be an interesting one, and I expect we will learn a lot. I yield back my time.

Mr. RUSH. The Chair thanks the chairman.

The Chair now recognizes the gentleman from Nebraska, Mr. Terry, for 2 minutes.

Mr. TERRY. Thank you, Mr. Chairman, but I am going to waive so I will have more time for questions. Thank you.

Mr. RUSH. The Chair now recognizes the gentleman from Maryland, Mr. Sarbanes, for 2 minutes.

Mr. SARBANES. Thank you, Mr. Chairman. I don't need 2 minutes.

I just want to thank Congressman Weiner for bringing attention to this issue and echo what Chairman Waxman said, which is it is just a matter of making sure people have good information at their fingertips and then they can make sound judgments, and the problem here is that oftentimes the information is far away from the reality of the situation.

And so we are looking forward to the testimony. We are looking forward to moving forward on this piece of legislation, and I yield back. Thank you.

Mr. RUSH. The Chair thanks the gentleman. The Chair thanks all the members for their opening statements.

Now we want to recognize our witness for the first panel, and I want to introduce him. He is a private citizen. His name is Dr. Julius A. Bazan. He lives in Lynbrook, New York, and he is going to testify regarding his experiences with this product and with this company. And so Dr. Bazan, it is important for you to know that this subcommittee has a standing practice that we will swear in all the witnesses, so would you please stand and raise your right hand?

[Witness sworn.]

Mr. RUSH. I want to thank you to much for taking time out from your busy schedule to be a participant in this hearing, and you are recognized for 5 minutes for the purposes of your opening statement.

TESTIMONY OF DR. JULIUS A. BAZAN, PRIVATE CITIZEN, LYNBROOK, NEW YORK

Dr. BAZAN. Thank you very much.

I would like to say I have a little bit of difficulty, if you would gentlemen would speak up so I can hear you.

As was mentioned, you know, I am originally from Czechoslovakia. I have been in the United States for 31 years, and I have been living in Lynbrook in New York and have been practicing neurology for 25 years.

I am also an investor and I have been investing in the stock market in mutual funds, even commodities and options, for about 20 years. However, after 9/11 I lost about 60 percent of my investments, maybe probably more. So I decided about 8 years ago to get out of the market. I was just having my account in Ameritrade, and I was thinking what to do with my money. At that time it was clear that the dollar was declining, the value was losing, and I was thinking about what kind of investment I would be able to make.

Around the same time, you know, you listen to the news about gold and you listen to these advertisements and all different spokesman that you mentioned and you are exposed to these bombardments every day, especially I remember Goldline because I didn't know anything about gold but whatever they were saying was making sense to me because, you know, gold was holding its value and actually was increasing in value, so I said if I invest in gold, maybe I can maintain the value of my dollar, you know, going forward.

So I decided I would like to invest in gold but I didn't know what company to choose. However, at that time Goldline was advertising on a daily basis and you were basically bombarded. There was no other company which I could find to invest in gold. So eventually I decided to contact Goldline by phone number and I decided to open an account. Then eventually I was able to transfer the money and I was contacted by one of the salesmen from Goldline, and we decided, you know, how to invest the money. Initially I was thinking to purchase the bullion but I was told that bullion is not a good value to invest in because in the 1930s the government confiscated the gold and set the prices of the bullion and that would not be a good investment. On the other hand, I was told that coins have much better sell value, they are increasing in price and that will be an excellent investment for me because I can preserve my capital.

So not knowing anything about it, I eventually decided I will invest in gold coins as the representative suggested, and at that time I didn't know actually that his decision to sell me coins was based on commissions. It looked like if I was to purchase bullion, he would be getting about 5 percent of commission. However, if I bought coins he would get 35 percent of the commission. So anyhow, I bought the gold and I was waiting for about 6 months. I got the promise that it is very likely that gold price will reach $3,000 in one year. However, after 6 months I didn't see the price of gold move too much. It stayed around $1,100. So I decided, because I found another investment opportunity, that I will liquidate my holdings in gold.

To my shock, when I called the representative, he mentioned that there is something called spread, which I didn't know too much about, which now I understand is the difference between selling and buying the price of the gold. And he told me, I had my initial investment which was $140,000. He said that my investment now is worth only $83,000. So essentially it meant that that the day I purchased this gold, my value, he took about $60,000 in profit and left me holding a bag, $83,000. So I essentially felt robbed. It felt like legalized robbery. And so in any case, I decided to sell gold at that time, and that is my story.

[The prepared statement of Dr. Bazan follows:]

STATEMENT OF JULIUS A. BAZAN, M.D.

My name is Julius Bazan, and I live in Lynbrook, New York. I am a medical doctor and have been actively practicing neurology for thirty years. In the fall of 2009, I had an IRA account with approximately $140,000. I saw the advertisements for Goldline as a seller of gold for personal investment purposes. Since I was concerned about having a secure retirement in spite of whatever economic troubles might come to our country, I decided to look into the purchase of gold with the funds I had in my IRA account.

I called the number for Goldline and was connected with a representative. The representative repeated many of the things that I had heard on television and radio. He indicated that these were dangerous times and that I should purchase Gold to protect myself. The representative steered me toward the purchase of gold coins because he said the price of bullion could be fixed by the government, but the price of coins cannot. The representative also indicated that gold would be a good investment because it would likely reach $3,000.00 per ounce within the next year. I was never told what the actual value of the coins was on the day that I purchased them compared to a corresponding amount of gold bullion. Nor was I told on the day of purchase that I was paying significantly higher than market value for the coins.

Thinking that I was doing something wise and safe for my retirement, on December 23, 2009, I purchased approximately $140,000.00 worth of gold coins. It was not until several days later that I received a letter from the company representative with some paperwork enclosed.

After several months, I became concerned when the price of gold did not move significantly upwards as I had been advised it likely would. I decided to call the representative to sell the coins back to Goldline and put the money back into my IRA account. When I attempted to process that transaction with Goldline in late July 2010, I learned for the first time that the coins were actually only worth about $85,000.00. Since the price of gold had not moved significantly, and had even increased slightly, I was astounded to learn the market price of these coins was about the same $85,000.00 on the very day that I had paid $140,000.00 for their purchase.

I believe that I was deceived by not being provided the very basic information about the market value of the coins at the time of purchase. I believe that I was manipulated into purchasing coins as opposed to gold bullion when I had originally intended to buy bullion. I am embarrassed and ashamed that I was tricked in this way. Overnight, I lost almost 40% of the value of my retirement account. I would hope that you gentlemen will do whatever is necessary to make sure that no other citizen of this country is ever treated this way again. Thank you.

Mr. RUSH. Thank you so much. We sympathize and are sympathetic to you for your loss of your dollars and your substantial loss to your individual retirement account, which I understand you lost as a result of your investment. Again, you have the sympathies of both myself and the other members of this subcommittee.

I have a few questions that I want to ask you, and I have 5 minutes in which to ask these questions. How many transactions did you conduct with Goldline?

Dr. BAZAN. This was just one purchase but I bought multiple different coins, but the bulk of it was in premium gold eagle. I believe they call it golden proof eagle, which at that time I was sold for $3,300 and I understand that the melt price of that coin was only $1,000 when I bought it. And on the market price, I think it was hiked up by about 30 percent or 35 percent. I was charged for one coin $3,300 while the melt price was only $1,000.

Mr. RUSH. So am I to assume that you only spoke with one salesperson?

Dr. BAZAN. Only one salesman, yes.

Mr. RUSH. Were you ever informed of fees that would incur in association with your transaction?

Dr. BAZAN. No, absolutely not, no discussions of any fees or any commissions or anything else.

Mr. RUSH. Okay. Before contacting Goldline in July 2010, when you wanted to sell your investment, did you hear or see any disclosures about how much Goldline was marking up the proof American eagle coins you agreed to purchase?

Dr. BAZAN. No.

Mr. RUSH. Or how much the spread was on those coins?

Dr. BAZAN. I had no information about prices of coins at that time.

Mr. RUSH. After purchasing the coins, did you receive any disclosures?

Dr. BAZAN. No.

Mr. RUSH. Thank you.

I will now yield the ranking member 5 minutes for the purposes of questioning the witness.

Mr. WHITFIELD. Is it Dr. Bazan or——

Dr. BAZAN. Bazan, yes.

Mr. WHITFIELD. Well, Dr. Bazan, thank you very much for taking time to be with us today, and I also would like to offer my apologies for the loss of your investment. I do want you to know, I have lost a lot of money in investments as well and that is something that we all deal with.

I believe I heard the chairman ask you if you had received any sort of disclosure when you purchased this gold, and I may be wrong, but it is my understanding that before this company will actually sell gold product to a purchaser, that they send this out, which is called an account and storage agreement, and on the back it says "client acknowledges that he or she has read and understands all of the terms and conditions of the account and storage agreement and shall be bound by them." And I was just reading through here, and I know that the very first thing it says here is that "this is speculative, unregulated and volatile and that prices may rise or fall." And then it says "profit can only be made if prices rise over the investment period in an amount sufficient to overcome the spread as set forth in paragraph 13.” Did you receive this at all before you purchased——

Dr. BAZAN. I don’t know if it was in this form, but of course you mentioned the storage fees. You know, I was aware of the storage fees. I mean, my question was about the purchase fees and those prices I didn’t know nothing about.

Mr. WHITFIELD. You didn’t know anything about the purchase fees?

Dr. BAZAN. Nothing about the price but I know about the storage fees.

Mr. WHITFIELD. Okay. And how long did you actually keep the gold?

Dr. BAZAN. The gold, I bought it sometime in December of 2009 and kept it until May of 2010, 6 months.

Mr. WHITFIELD. Six months. Well, I noticed that in another one of their documents, it does specifically say, it says, “If you are purchasing coins, bullion or rare currency for investment purposes, they should be considered a long-term investment. We believe that rare coins and currency should be held for at least 3 to 5 years and preferably 5 to 10 years to maximize any potential for gain.” Did you see that in any of these documents or did you consider that?

Dr. BAZAN. I don’t think I read it. However, you know, I was aware of the risk I am taking. However, I was under the impression that when I am buying these coins I am buying them at the market price. So of course I naturally assumed if the price of the gold will go down, I will lose my money. However, I didn’t expect at the time of the purchase to lose $60,000 the minute I purchased that gold.

Mr. WHITFIELD. Yes. Well, you know, I just read this legislation, and I haven’t read it thoroughly and I don’t know what the actual definition is for a precious metal dealer, but once I want to go back to the U.S. Mint, because you can go to the U.S. Mint today and you can buy a 2010 American buffalo 1-ounce gold proof coin, 1 ounce, and that is $1,560. Well, the actual price of gold today is around $1,290 per troy ounce, so buying this from the federal government, you walk out the door and you have already lost approximately $300. And so if this legislation is actually going to be going after private dealers, then I am just wondering are we being discriminatory if we don’t do something about what the U.S. government is doing.

Dr. BAZAN. Well, you know, that price was $1,000. He sold me that 1 ounce for $3,300. There is a big difference between the price.

Mr. WHITFIELD. One ounce for how much?

Dr. BAZAN. This one coin is 1 ounce. I paid $3,300 for it.

Mr. WHITFIELD. Were you aware of the price of gold on that day in the market, 1 troy ounce of gold?

Dr. BAZAN. Yeah, I know those prices of $1,200. I was told that that was a numismatic value of that coin, that it was an additional $2,000 worth of numismatic value on that coin.

Mr. WHITFIELD. So even though you knew the price of the gold for that day, it was your understanding that the value of the coin was what you paid for it? I mean, is that what you are saying?

Dr. BAZAN. Well, I assumed that the $3,300 was the price of that coin on the market, so if I go to redeem it I understand I will lose some money and I would not be able to recover $3,300, but I didn't expect that I will lose $2,000 on that coin.

Mr. WHITFIELD. Well, like I said, we do appreciate your being here today and being willing to talk about this issue. I might say, and of course, I may be totally wrong because I am in a rural area of this country but I haven't had any constituent write to me about this issue. Now, that doesn't mean that there are not a lot of people maybe in the same boat you are, but thank you for being with us and we look forward to the other testimony.

Dr. BAZAN. Thank you very much.

Mr. RUSH. The Chair recognizes Mr. Weiner for 5 minutes for the purposes of questioning.

Mr. WEINER. Thank you, Mr. Chairman.

Just to pick up on what Mr. Whitfield said, Dr. Bazan, you are a perfect witness because you are not alone. The same exact experience led to 50 Better Business Bureau complaints, $170,000 consent order signed by this company in Missouri because they are ripping off Missouri constituents, 28 FTC complaints. They are under investigation by the L.A. district attorney, the Santa Monica District attorney. There is a class action lawsuit against them in South Carolina. ABC News just this morning reported that three of their high-ranking current employees were banished from selling securities of their fraudulent activities.

But you are perfect for another reason. I talked about the fear, the lies, the rip-off. Your case speaks to all three. You called because you were fearful and you were probably led to be fearful maybe by a document like this that Goldline puts in all of its pitch packets. It is a scary looking executive order saying that gold can be seized at any time. Gold bullion, don't get into gold bullion because it can be seized. Now, they don't explain to you that this executive order hasn't been enforced since the 1970s. It was only seized then because it was the currency backer for the dollar, which it no longer is, and they don't explain to you well, if you want to really get frightened, they can seize your coins as well. And then you are told oh, no, it is a better value not to be in bullion, which you called for, but for these coins.

Let me explain to Mr. Whitfield and the rest of the committee how these coins operate. Numismatic coins have their value derived from two things. One is the amount of gold in it. If you are really scared about the economy and you want to buy gold, that is the little element that you care about. There is another element, though, in fairness. It is the scarcity. Mr. Whitfield demonstrated the scarcity of these products by calling up the Mint and buying some. There is no scarcity. If tomorrow the dollar goes into rapid inflation, maybe it will, maybe it won't, you will have those coins. Good luck buying a loaf of bread with those coins, because if you went on eBay today, you will find that those coins are readily available for nowhere near the price is being sold at, which brings us to the rip-off, and this is the part I want Mr. Whitfield and Mr. Scalise to understand. This gentleman thought when he spent $3,000, he got $3,000 worth of gold. Is that a preposterous assumption? Is he a naif? Is he naive? No, it is a reasonable assumption.

I am buying gold, here is my $3,000, give me $3,000 worth of gold. He gave them $140,000. That moment he lost about $80,000. That second, he was ripped off.

This is not about whether or not you should buy gold, Mr. Scalise. It is not about whether or not you can buy a coin, Mr. Whitfield. You have to understand, these people are being told to buy these coins for investment purposes. If you want to buy a nice van Gogh because it is very scarce and you think it will still be valuable in generations to come, more power to you. But no one is saying that in these ads. None of these salesmen are saying that. They are saying it is a hedge against a downturn in the economy; they will have value. And to say that the disclosure says that there is a 30 percent spread value, well, you know, Dr. Bazan, that what that means for consumers is a 54 percent markup. It is a clever use of language, but that is really what it is.

Look, it is fair to say we should get a few extra dollars because we are storing it or we should get a few extra dollars because we have these high-quality salesmen like the ones who were investigated by the FCC. But it is simply wrong to leave our constituents, middle-class people struggling to make it who are getting the bejesus scared out of them based on these lies, who are then taken from a bullion investment and put into a coin investment based on the out-and-out near fraud of saying that those things are going to retain value better and then taking the exact same product and saying we are going to provide triple and quadruple what this is available for elsewhere. This is why we need improved laws. And I say to my friend, Mr. Whitfield, yes, you can open this thing and say 30 percent, it is right here, does that make it less of a rip-off? Does it make it less of a rip-off? Does it mean that consumers shouldn't be protected? Dr. Bazan, who is an articulate, smart guy, was it so naive of him to believe that if I invest $100,000 in gold I am going to have $100,000 in gold?

These coins, this firm, this industry is an orchestrated effort first to scare people, then to lie to them—the coins are a better deal—and then to rip them off on those coins. That is what happened to this gentleman. That is what happened to all these people that I just listed and that is why we need improved disclosure.

And I say to Mr. Whitfield, you concluded, "I haven't heard a lot of complaints." Well, here is something you might be interested to know. If you complain to Goldline and they agree to settle with you, do you know you have to sign an agreement saying you won't file a complaint with the Better Business Bureau, you won't file a complaint with Congress, you won't call Congressman Whitfield? What kind of reputable company does that? So not only you are only going to try to settle this with you, your complaint, if you don't talk about it. Well, I am glad you are here to talk about it and so I am.

Dr. BAZAN. Thank you.

Mr. RUSH. The Chair wants to announce that there is a vote that occurs on the Floor. There are five votes remaining, and there are less than 5 minutes to get to the Floor. So this subcommittee will have to recess for approximately 40 minutes until we conclude voting on the series of votes that are now occurring on the House Floor. So please accept our apologies for the recess but we have to get to the Floor in order to vote on these important matters on the Floor.

So the subcommittee now stands in recess until 10 minutes after the last votes.

[Recess.]

Mr. RUSH. The subcommittee will come to order again.

The Chair now recognizes Mr. Scalise for 5 minutes for the purposes of questioning the witness.

Mr. SCALISE. Thank you, Mr. Chairman.

Is it Mr. Bazan?

Dr. BAZAN. Yes.

Mr. SCALISE. What was the motivator to make you want to buy gold? I think you were kind of talking about that earlier, but can you give——

Dr. BAZAN. The main thing was to hedge against inflation. Of course, we knew that the dollar was losing its value and investment was going down so the only way I believed to protect myself was to invest in gold to hedge against inflation.

Mr. SCALISE. And the value of the dollar obviously dropping, when did all this really start? When did your interest in buying gold come about?

Dr. BAZAN. I mean, at that time there was a lot of talk about gold and, you know, indeed the price of gold was going up. That was the only investment which sounded reasonable. I didn't want to trade too much so I put it in gold and keep it there and see what happens.

Mr. SCALISE. And obviously with the price, and I know I have shown the chart earlier with the price of gold, there are dramatic increases. I am not sure exactly when——

Dr. BAZAN. The problem, the minute I bought the gold, they charged me 35 percent on my commission so I invested 140 and at that moment I had only $83,000 so that means that I will have to wait years before I can recover my losses. I was hoping that I am buying it at market price and I was deceived. There was no discussion about price of gold, and I was almost forced to buy coins instead of bullion because I was told that government will confiscate the bullion or they fix the price and it may be useful, and the coins are the only way to go because they will always increase in price and government cannot touch them, which is a lie.

Mr. SCALISE. Right, but ultimately you could have brought——

Dr. BAZAN. Say again?

Mr. SCALISE. Ultimately you did have the option to buy either one?

Dr. BAZAN. And I bought all the coins, which was suggested by the representative.

Mr. SCALISE. And then how long did you hold it for?

Dr. BAZAN. For 6 months.

Mr. SCALISE. Six months. All right. Thanks.

Yield back.

Mr. RUSH. The Chair doesn't see any other members from this side.

Mr. Bazan, we certainly appreciate you taking time out from your schedule to be with us.

Dr. BAZAN. Say again, please.

Mr. RUSH. I said we certainly appreciate you taking the time out from your busy schedule to be here with us, and again, you have our sympathy and our sincere regrets for your experiences, and we intend to continue to take a serious look at this issue and try to resolve this issue so that we can bring your situation and similar situations experienced by other Americans to a screeching halt, so again, thank you so very much, and we wish that you will continue to be the kind of citizen that you would be a courageous citizen. Thank you so very, very much.

Dr. BAZAN. Thank you.

Mr. RUSH. The Chair would ask the second panel now, would you please take a seat at the witness table.

I want to welcome all those who are the witness desk, those who comprise the second panel for this subcommittee hearing, and before we begin, I want to introduce each and every one of the members of the second panel. Seated to my left is Ms. Lois Greisman. Ms. Greisman is Associate Director of the Marketing Practices Division for the Bureau of Consumer Protection for the Federal Trade Commission. Next to Ms. Greisman is Mr. Charles Bell, who is the Program Director for Consumers Union. And seated next to Mr. Bell is Mr. Scott Carter. He is the Executive Vice President of Goldline International. And seated next to Mr. Carter is Mr. Howard Beales. Dr. Beales is Associate Professor at the George Washington University School of Business.

Again, I want to thank each and every one of you for participating in this hearing and sacrificing your time for this committee and this Congress.

It is the practice of this subcommittee to swear in witnesses, so I would ask that each of you stand and raise your right hand and answer this question.

[Witnesses sworn.]

Mr. RUSH. Please let the record reflect that the witnesses have all answered in the affirmative.

And now each one of you will be recognized for 5 minutes for the purposes of an opening statement. Ms. Greisman, we will recognize you for 5 minutes.

TESTIMONY OF LOIS GREISMAN, ASSOCIATE DIRECTOR, MARKETING PRACTICES DIVISION, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION; CHARLES BELL, PROGRAMS DIRECTOR, CONSUMERS UNION; SCOTT CARTER, EXECUTIVE VICE PRESIDENT, GOLDLINE INTERNATIONAL; AND HOWARD BEALES, PH.D., ASSOCIATE PROFESSOR, THE GEORGE WASHINGTON UNIVERSITY SCHOOL OF BUSINESS

TESTIMONY OF LOIS GREISMAN

Ms. GREISMAN. Thank you, Chairman Rush, Ranking Member Whitfield and member of the committee. I am Lois Greisman, Associate Director in the Bureau of Consumer Protection at the Federal Trade Commission. I appreciate the opportunity to testify before you today about consumer protection issues arising from the sale of coins and precious metals as investments.

As you know, the Federal Trade Commission's written testimony has been provided. My own statement and any responses to questions you may have solely represent my own views.

With the downturn of the American economy, the Commission has committed substantial resources to shut down scams that harm financially distressed consumers with a particular focus on job and business opportunity scams, foreclosure rescue scams, scams preying upon the economic stimulus package and scams targeting those seeking health insurance. With the economic downturn, we also see scams focusing more directly on investment opportunities as people seek low-risk, high-yield investments and not surprisingly, coins and precious metals often are promoted as such good, safe investments.

We are well aware of consumer complaints involving precious metals and coins of investment and are looking closely into some of the issues raised, and as always, we are consulting with our colleagues at the State and federal level and in particular the SEC and the CFTC. While I cannot address whether we are or are not looking at any particular area or entity, I do want to highlight some of the problems we have seen thus far and then turn to the new consumer educational materials we are issuing today.

Now, although the written testimony notes that the volume of complaints received by the Commission is quite low both for coins and precious metal, there are three main categories of complaints. First, complaints that some dealers use high-pressure sales tactics to persuade consumers to purchase collectible or historic coins rather than bullion coins and that they always may misrepresent the value of those collectible coin investments. Second, there are complaints that some unscrupulous marketers urge fast investment in a particular metal before the price skyrockets. In fact, consumers end up entering into risky and high-leveraged investments. Finally, as you are well aware from prior testimony on the Guarantee of a Legitimate Deal Act, we have seen complaints about companies that purchase consumers' jewelry and family heirlooms for their melt value but fail to provide a price quote before actually melting those items.

Now, the Commission takes investment fraud very seriously. The fact that we have not brought any law enforcement action in recent years is not to be taken as an absence of concern in the area of precious metals and coins. To the contrary, the revamped consumer educational materials, and I believe each office has been provided them, entitled "Investing in Gold: What is the Rush", highlights the Commission's concern with ensuring that consumers understand the differences among investments in gold coins, bullion coins and collectible or historic coins. In fact, the consumer educational materials consist of three discrete brochures.

As each of these brochures makes clear, these kinds of investments require a level of sophistication that one can acquire only by serious research. You have to know what you are buying and whether you were buying it as a collectible item or for the value of the precious metal itself. We hope these brochures will provide a solid starting point for consumers.

Finally, I do want to touch upon the Coin and Precious Metal Disclosure Act. This Act would address many of the consumer protection concerns that we have mentioned by requiring coin and precious metal dealers to disclose not only the purchase price but also other fees associated with the sale of the coins and precious metals as well as the melt value and reasonable resale value for coins and precious metals. Critically, I know that our revised consumer educational materials do suggest that the consumer ask for information on the melt value of a coin before making any purchase.

Now, as the testimony notes, we do have some concerns with respect to the proposed definition of the term "reasonable resale value" in section 1 of the bill and we would be pleased to continue to work with staff to address those concerns. Also, as noted in the testimony, we do not support the exemption of section 6 because it would exclude from the bill's coverage certain collectible coins that have been the subject of consumer complaint.

With that, I thank you very much for the opportunity to address the subcommittee. I look forward to working with you and to answering your questions. Thank you.

[The prepared statement of Ms. Greisman follows:]

PREPARED STATEMENT OF
THE FEDERAL TRADE COMMISSION

on

THE PRECIOUS COINS AND BULLION DISCLOSURE ACT

Before the

SUBCOMMITTEE ON COMMERCE,
TRADE, AND CONSUMER PROTECTION
of the
COMMITTEE ON ENERGY AND COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

WASHINGTON, DC
September 23, 2010

I. Introduction

Chairman Rush, Ranking Member Whitfield, and Members of the Committee, I am Lois Greisman, Associate Director in the Bureau of Consumer Protection at the Federal Trade Commission ("FTC" or "Commission"). I appreciate the opportunity to testify before you today about consumer protection issues arising from the sale of coins and precious metals as investments.[1]

Since the downturn of the American economy, the Commission has witnessed a proliferation of scams that target financially-distressed consumers. Scam artists lure consumers with false promises of employment and income opportunities, health insurance, guaranteed government grants, and guaranteed extensions of credit and loans.[2] Scam artists also are putting a new twist on an old scam – falsely touting coins and precious metals as low-risk, high-yield

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[1] This written statement represents the views of the Commission. My oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

[2] Since April 2009, the FTC has filed 40 cases challenging scams and other unlawful conduct relating to the financial downturn. In connection with the sweeps that the FTC has coordinated in the area, our state and federal partners have announced more than 500 related lawsuits and regulatory actions. For example, last month, the Commission and its state counterparts announced *Operation Healthcare Hustle,* which involved 54 lawsuits and regulatory actions against sham operations that targeted uninsured, underinsured, and unemployed Americans by falsely marketing medical discount plans as health insurance. *See Press Release, FTC, State Attorneys General, Insurance Commissioners Crack Down on Bogus "Medical Discount Plans" Peddled to the Uninsured, Underinsured, and Unemployed* (Aug. 11, 2010), *available at* http://www.ftc.gov/opa/2010/08/hustle1.shtm. In addition, over the last fourteen months, the Commission and its federal and state partners have announced over 140 lawsuits and regulatory actions as part of two law enforcement sweeps against fraudulent operations that fleeced consumers with promises of jobs or other business opportunities. *See Press Release, FTC Cracks Down on Con Artists Who Target Jobless Americans* (Feb. 17, 2010), *available at* http://www.ftc.gov/opa/2010/02/bottomdollar.shtm.; *Press Release, FTC Cracks Down on Scammers Trying to Take Advantage of the Economic Downturn* (July 1, 2009), *available at* http://www.ftc.gov/opa/2009/07/shortchange.shtm.

investments to hedge against the economic downturn and fears of a declining U.S. dollar. Often these marketers also fail to disclose hidden fees, mark-ups, and premiums added onto the purchase price of the coin or precious metal investment. By failing to disclose this key information to consumers, the marketers divert consumers from purchasing investment opportunities from legitimate dealers, and leave the consumers drowning in underwater investments.

Today's testimony will address important consumer protection issues involving coin and precious metal investments. The testimony will describe the Commission's past and current enforcement initiatives, introduce the Commission's new consumer education piece on gold and other precious metal investments, and provide comments on the proposed legislation.

II. The FTC's Law Enforcement Initiatives

The Commission has longstanding enforcement experience with investment scams. Beginning in the 1980s, the Commission brought enforcement actions against dozens of fraudulent operators that marketed bogus investments to consumers and caused hundreds of millions of dollars in consumer injury.[3] Investment scams proliferated during this period when

[3] *See, e.g., FTC v. Affordable Media, LLC*, Civ. No. CV-S-98-006696-LDG (D. Nev. Apr. 28, 1998); *FTC v. Hang-Ups Art Enters., Inc.*, Civ. No. 2:95-cv-00027-RMT-JG (C.D. Cal. Jan. 4, 1995); *FTC v. Nat'l Art Publ'rs and Distribs., Inc.*, Civ. No. 3:94-cv-0518-R-AJB (S.D. Cal. April 4, 1994); *FTC v. Renaissance Fine Arts, Ltd.*, Civ. No. 1:94-cv-0157-PRM (N.D. OH Jan. 27, 1994); *FTC v. The Cambridge Exch. Ltd., Inc.*, Civ. No. 0:93-cv-06300-WDF (S.D. Fla. Apr. 15, 1993); *FTC v. Western Trading Group,* Civ. No. 2:92-cv-04194-RMT (C.D. Cal. July 15, 1992); *FTC v. World Wide Classics, Inc.,* Civ. No. 2:92-cv-03363-TJH (C.D. Cal. June 4, 1992); *FTC v. First Am. Trading House*, Civ. No. 0:92-cv-06049-JCP (S.D. Fla. Jan. 21, 1992); *FTC v. Am. Microtel, Inc.*, Civ. No. CV-S-92-178-LDG (RJJ) (D. Nev. 1992); *FTC v. Solomon Trading Co., Inc.*, Civ. No. 2:91-cv-01184-SMM (D. Ariz. July 23, 1991); *FTC v. Michael L. Zabrin Fine Arts, Ltd.*, Civ. No. 1:90-cv-06033 (N.D. Ill. Oct. 17, 1990); *FTC v. Prudential Res., Inc.*, Civ. No. 90-185-RDF-RJJ (D. Nev. Mar. 19, 1990); *FTC v. Morgan Whitney Trading Group, Inc.*, Civ. No. 90-4887 (C.D. Cal. 1990); *FTC v. Lloyd Sharp*, Civ. No. CV-S-89-870-RDF (RJJ) (D. Nev. Dec. 18, 1989); *FTC v. Magui Publ'rs, Inc.*, Civ. No. 89-3818-RSWL (GX)

many Americans lost confidence in traditional investments, like stocks and bonds, due to the high inflation rates in the late 1970s and early 1980s. Bogus firms sold alternative forms of investments, such as gold or silver bullion, rare coins, precious and semi-precious gemstones, oil and gas leases, and fine art. Many of these firms were nothing more than telephone boiler rooms that used high-pressure, polished sales pitches – sometimes supported by direct mail solicitations, slick promotional brochures, and glossy ads in mainstream publications. In general, these fraudulent investment schemes bilked individual consumers an average of $5,000 to $10,000 by falsely promising large investment returns with little to no risk. When the promised returns never materialized, the FTC stepped in and was able to return more than tens of millions of dollars to defrauded investors.[4]

A significant portion of the Commission's activity in this area involved the sale of historic coins. The FTC has brought 17 cases against companies that sold overpriced and/or

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(C.D. Cal. 1989); *FTC v. Amrep Corp.,* Civ. No. 1:87-cv-04425-PNL (S.D.N.Y. June 24, 1987); *FTC v. Atlantex Assocs*., Civ. No. 1:87-cv-00045-LCN (S.D. Fla. Jan. 2, 1987); *FTC v. Am. Nat'l Cellular,* Inc., Civ. No. 85-7375 WJR (C.D. Cal. 1985); *FTC v. Alaska Land Leasing, Inc.*, Civ. No. 84-5416 MRP (JRX) (C.D. Cal. July 23, 1984); *FTC v. Leland Indus., Inc.*, Civ. No. 83-3518-CBM (PX) (C.D. Cal. 1983); *FTC v. U.S. Oil & Gas Corp*., Civ. No. 1:83-cv-01702-WMH (S.D. Fla. July 7, 1983); *FTC v. Int'l Diamond Corp.*, Civ. No. C-82-0878 (N.D. Cal. 1982); *see also infra* note 5.

[4] *See, e.g., FTC v. Oak Tree Numismatics, Inc.*, Civ. No. 2:91-cv-01626-NHP (D.N.J. Apr. 18, 1991); *FTC v. Morgan Whitney Trading Group, Inc.*, Civ. No. 90-4887 (C.D. Cal. 1990); *FTC v. Certified Rare Coin Galleries, Inc.*, Civ. No. 1:89-cv-01307-KLR (S.D. Fla. June 26, 1989); *FTC v. Sec. Rare Coin & Bullion Corp.*, Civ. No. 3:86-cv-01067-RGR (D. Minn. Dec. 29, 1986); *FTC v. Rare Coins of Georgia*, Civ. No. 1:87-cv-02772-WCO (N.D. Ga. Dec, 21, 1987); *FTC v. Am. Nat'l Cellular,* Inc., Civ. No. 85-7375 WJR (C.D. Cal. 1985); *FTC v. Alaska Land Leasing, Inc.*, Civ. No. 84-5416 MRP (JRX) (C.D. Cal. July 23, 1984); *FTC v. Leland Indus., Inc.*, Civ. No. 83-3518-CBM (PX) (C.D. Cal. 1983); *FTC v. U.S. Oil & Gas Corp*., Civ. No. 1:83-cv-01702-WMH (S.D. Fla. July 7, 1983); *FTC v. Int'l Diamond Corp.*, Civ. No. C-82-0878 (N.D. Cal. 1982).

misgraded historic coins for investment purposes.[5] These cases alleged that purported coin dealers falsely marketed their coins as good, safe investments. In reality, these dealers sold the coins with significant mark-ups, often as high as 100 to 300% over the prevailing market price. These mark-ups made a return on the investment – or even a recovery of the initial purchase – impracticable.

Recent complaints lodged with the FTC indicate that scam artists are luring consumers with three types of precious metal or coin scams. First, some consumers have complained to the FTC about deceptive sales pitches for historic coin investments. Recent complaints reviewed by Commission staff suggest that some dealers use high-pressure sales tactics to persuade consumers to purchase historic coins rather than bullion, and misrepresent the value of historic coin investments. For example, some consumers complain that they invested in coins only to discover, after the fact, that the investment value of the coins was far lower than they had been led to believe.

Second, consumers also report that some unscrupulous marketers pitch highly leveraged

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[5] *See FTC v. Dahlonega Mint, Inc.*, Civ. No. 4:94-civ-00070-HLM (N.D. Ga. Apr. 11, 1994); *FTC v. Goddard Rarities, Inc.*, Civ. No. 2:93-cv-04602-JMI-GHK (C.D. Cal. Aug. 3, 1993); *FTC v. U.S. Rarities, Inc.*, Civ. No. 1:92-cv-0363-JWK (S.D. Fla. Feb. 13, 1992); *FTC v. Fed'l Coin Repository, Inc.*, Civ. No. 9:92-cv-01634-ADS (E.D.N.Y. Apr. 3, 1992); *FTC v. T.G. Morgan, Inc.*, Civ. No. 4:91-cv-00638-DSD-FEB (D. Minn. Aug. 21, 1991); *FTC v. Oak Tree Numismatics, Inc.*, Civ. No. 2:91-cv-01626-NHP (D. N.J. Apr. 18, 1991); *FTC v. Golden Oak Numismatics, Inc.*, Civ. No. 91-6741 (C.D. Cal. 1991); *FTC v. Hannes Tulving Rare Coin Investment, Inc.*, Civ. No. 3:90-mc-06565 (S.D. Cal. Sept. 26, 1990); *FTC v. Certified Rare Coin Galleries, Inc.*, Civ. No. 1:89-cv-01307-KLR (S.D. Fla. June 26, 1989); *FTC v. Numismatic Cert'n Inst., Inc.*, Civ. No. 1:89-cv-1383 (S.D. Fla. July 7, 1989); *FTC v. Woodmar Corp.*, Civ. No. 2:88-cv-04645-AHS-E (C.D. Cal. August 1, 1988); *FTC v. Lynn Murphy & Co., Inc.*, Civ. No. 88-0572 (D. Ariz. 1988); *FTC v. Rare Coins of Georgia*, Civ. No. 1:87-cv-02772-WCO (N.D. Ga. Dec, 21, 1987); *FTC v. Schoolhouse Coins, Inc.*, Civ. No. 2:87-cv-05415-KN (C.D. Cal. Aug. 17, 1987); *FTC v. Numismatic Fund'g Corp.*, Civ. No. 87-4045-LDW (E.D.N.Y. 1987); *FTC v. Sec. Rare Coin & Bullion Corp.*, Civ. No. 3:86-cv-01067-RGR (D. Minn. Dec. 29, 1986); *FTC v. Rare Coin Galleries of Am., Inc.*, Civ. No. 86-2683-C (D. Mass. Sept. 16, 1986).

precious metal purchases with promises that the investments are "safe" or "low-risk" investments. Often, the marketers claim that current political and economic conditions indicate that precious metal values are poised to skyrocket, or reach a benchmark value by a certain date. Many consumers appear to buy into these specially structured deals without understanding that they are paying only a small percentage of the purchase price of the metals with the balance financed by a third party. The telemarketers charge hefty commissions and other fees that significantly reduce or completely eliminate the value of the consumers' initial investments.

Finally, as the Commission described to this Committee in previous testimony about the Guarantee of a Legitimate Deal Act, consumers also complain about companies that purchase consumers' precious metals, such as jewelry, watches, and family heirlooms, for the melt value of their raw precious metal content.[6] According to consumer complaints, some purchasers of precious metals fail to provide a quote before melting the jewelry or other precious metal item into raw form. As a result, consumers who are unhappy with the offered purchase price have little recourse other than to accept the "offer."

While the complaints relating to coins and precious metals account for less than one percent of all complaints received by the Commission each year for the past five years,[7] they reflect that the individual dollar loss to consumers in some cases is critically high.[8] Reports that

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[6] *See Prepared Statement of the Federal Trade Commission on H.R. 2480 (the Truth in Fur Labeling Act) and H.R. 4501 (the Guarantee of a Legitimate Deal Act)* (May 13, 2010), *available at* http://www.ftc.gov/os/testimony/100513furlabelingtestimony.pdf.

[7] Since 2005, the Commission has received approximately 850 complaints.

[8] From January 2010 to the present date, the Commission has received slightly more than one hundred complaints relating to "precious metals" and "coins." Some of these consumer complaints report individual losses in the range of hundreds of thousands of dollars while other consumers do not report the amount of loss. Thus it is difficult to give a meaningful estimate of

unscrupulous marketers employ misrepresentations or fail to disclose associated fees and policies in order to sell such investments raise important consumer protection concerns. Importantly, as discussed in section IV below, the Commission believes that legislation can help to address these consumer protection concerns. In addition, Commission staff are actively pursuing various investigative leads in this industry.

III. Consumer Education

Today the Commission is pleased to announce three new consumer educational brochures that provide consumers with key information they need to know before investing in coins and precious metals.[9] In particular, the brochures provide useful information to help consumers understand the differences among investments in gold stocks and funds, bullion, bullion coins, and historical coins.

Bullion is a bulk quantity of a precious metal, such as gold or silver, that is assessed according to weight and typically cast as bars or ingots. Bullion coins, on the other hand, are coins that are struck from precious metals, such as gold or silver. The value of bullion and bullion coins is determined by the precious metal content of the bullion or the coin. The value of historic coins, however, depends on their historical or aesthetic value, as well as on their rarity or condition. The precious metal value of a historic coin may be greater or less than its value as a collectible. Because a consumer might not know whether a particular coin is bullion or historic, our consumer education materials recommend that consumers find out the melt value of any coin before purchasing it.

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the typical out-of-pocket loss to consumers.

[9] As is the case with all FTC consumer educational materials, these brochures will be available for free on the FTC's website.

The brochures also include a glossary of industry terms that consumers need to understand in order to knowledgeably consider precious metal and coin investments. In addition, the brochures warn consumers about common scams in the precious metals arena similar to the complaint trends described above. For example, in the publication focusing on bullion and bullion coins, the FTC warns consumers about leveraged precious metal scams as well as scams that misrepresent the value of bullion coins. In the brochure focusing on historic coins, the FTC describes and warns consumers about historic coin scams that involve false coin grading claims, misrepresentations regarding the value of purported historic coins, and bogus buy back options.

IV. Proposed Legislation

The Commission supports the goals of the Coin and Precious Metal Disclosure Act. The Coin and Precious Metal Disclosure Act would address many of the consumer protection concerns raised today by requiring coin and precious metal dealers to fully disclose not only the purchase price but also all other fees associated with the sale of coins and precious metals, and the melt value and reasonable resale value for coin and precious metals. The proposed legislation further would require coin and precious metal dealers to make these disclosures clearly and conspicuously prior to consummation of the sale.

These provisions provide meaningful and tailored protection to consumers by addressing the potential abuses and possible deception in precious metal and coin investments discussed above.[10] Importantly, the proposed legislation also provides the FTC the authority to seek civil

[10] The potential abuses by companies that purchase consumers' precious metals for their melt value, which also are described in Section II, above, are addressed by the Guarantee for a Legitimate Deal Act.

penalties and allows for enforcement by the states, each of which can be powerful deterrents and can leverage the effective reach of the bill.

The Commission has two suggestions to improve the legislation. First, the proposed definition of the term "reasonable resale value" in Section 5 requires a coin and precious metal dealer to ascertain the resale value of a coin or precious metal by determining what other coin and precious metal dealers would pay to purchase the coin or precious metal. Ideally, this provision would tell consumers whether the coin or precious metal has been marked up significantly over the market value. The Commission is concerned, however, that as drafted, this definition could enable unscrupulous marketers to collude with each other by stating artificially high purchase prices, and Commission staff is prepared to work with the Subcommittee on this issue.

Second, the Commission believes that the bill's exemption at Section 6 will exclude from the bill's coverage certain collectible coins that have been the subject of consumer complaints. As noted above, much of the Commission's law enforcement activity in this area involved historic coins that were falsely marketed as good, safe investments. In our experience, consumers believe that coins with even some modest precious metal content are likely to increase in value due, primarily, to that content. The disclosures required by the bill would directly address possible confusion consumers might have about the investment potential of coins with only modest precious metal content. Therefore, the Commission suggests eliminating the exemption at Section 6.

V. Conclusion

Thank you for providing the Commission this opportunity to appear before the Committee to discuss these important consumer protection issues and to introduce the Commission's new consumer education initiative focused on gold investment scams. The Commission remains committed to protecting consumers from frauds that take advantage of the economic downturn, and appreciates the Committee's interest in our views on the proposed legislation.

Mr. RUSH. Thank you very much.

Mr. Bell, you are recognized for 5 minutes.

TESTIMONY OF CHARLES BELL

Mr. BELL. Chairman Rush, members of the committee, thank you so much for the invitation to testify here today on ways to protect consumers who purchase gold coins and metal bullion. We commend you for holding this hearing to focus attention on ways to protect consumers and encourage a safer marketplace.

As you know, Consumers Union is the independent, nonprofit publisher of Consumer Reports and Consumer Reports Money Advisor. We work to empower consumers by informing and educating them about the top consumer issues of the way, and we also as part of our work report on scams and fraud both to alert consumers and also advocate for public policy measures for greater protection.

As I summarize in our testimony, over the last several years we have seen numerous news reports and complaints received by regulators and law enforcement agencies indicating that consumers are experiencing significant problems in transactions related to gold coins and metal bullion and we think that those problems are indeed worthy of attention by your subcommittee.

Many of the problems that we have seen come to public light are related to high-pressure sales tactics that entice consumers to buy coins that have high markups, that turn out to have much less resale value that the consumer initially expected.

Consumers are also at risk because sellers of gold coins and bullion may not be licensed or regulated either by the Securities and Exchange Commission or the Commodities Futures Trading Commission, and sales representatives may not be licensed as investment advisors, even though they present their products as an investment and may be perceived by the consumer as a financial advisor. So we are concerned that coin and bullion sellers are subject to relatively limited public oversight, and that state consumer protection authorities may only be able to offer limited help for consumers who feel they have been defrauded.

Through our publications, Consumers Union has urged consumers to be cautious in buying gold coins, and to be particularly wary of high-pressure sales tactics over the phone. We emphatically agree with the Federal Trade Commission that this is an area where consumers need to do extensive homework before making a purchase decision. We generally advise consumers who are interested in investing in gold as a portion of their portfolio not to buy physical gold, but instead to purchase shares in an exchange-traded fund that purchases gold for clients and holds it in a bank, because of the much lower trading fees and annual expenses.

By contrast, companies selling gold coins may mark them up by significant margins of 20-30 percent or significantly more such that it will take many months or years for consumers to even break even.

We then summarize issues and concerns that have been raised by a number of companies in the marketplace. We have seen complaints on this issue over the years ebb and flow but we believe that for a significant number of customers there has been an ongoing problem for many years, and while the number of complaints that was noted may seem small as a portion of business transacted by the industry, it is generally accepted in most customers relations work that for each official complaint that is lodged with a company or government authorities, there are a significant number of other consumers who experience similar problems but did not complain, and this is especially so in things like financial scams where the consumer or investor may be very embarrassed and they may hope that the situation will get better with the passage of time and they may be very reluctant to talk about it.

So we also believe that in the stories that have come to public light, we often see a significant financial loss experienced by the customer and bitter disappointment expressed by people who felt that there was significant upside to the investments, did not understand the structure of what they were putting their money down for, so we think that there is a significant potential for misunderstanding about the value of the coins they are purchasing and the fees and services related to transactions.

We are also concerned that the prospective purchase of gold coins and bullion may be an impulsive decision for some consumers who may be responding to well-placed TV or Internet ads as was noted earlier today. This does not excuse consumers for looking out for their economic interest but it does raise the possibility that large number of customers in times of high gold prices and/or economic distress may be enticed through slick advertisements to quickly agree to Internet or telephone offers without carefully considering their options. And so for those customers, we think they need to be aware that there is a high cost to national television advertising and companies that use that business model may use very aggressive sales practices to try to upgrade them to products that are more lucrative or remunerative for the sales advisor that is selling that product that is earning a high commission.

So with that in mind, we believe that the draft bill that is being considered here today would be very much in the public interest of consumers to have much more prominent, conspicuous disclosures in the sale of coins and precious metal bullion. These disclosures, in our opinion, should include the item's purchase price, melt value and reasonable resale price as well as any fees that the customer will incur if the purchase is completed. We strongly favor provisions to make those disclosures orally to consumers if the sales are being solicited by telephone and to ensure that the FTC and State attorneys general have appropriate authority to investigate deceptive practices.

We believe that the people who are selling these products have a very good idea of what they are worth and they have access to information through numerous trade groups and industry sources that regularly compute the value of these coins and the person that generally may not have that information is the less experienced and less sophisticated consumer.

So we think that we have an opportunity to craft a bill here that would be very much in the consumer and public interest. The stories we have seen do not inspire confidence that consumers are getting the information that they need, and we hope this bill will give them that information. And other organizations in the consumer protection community such as the National Consumers League we expect will strongly support this legislation. Thank you.

[The prepared statement of Mr. Bell follows:]

Consumers Union
NONPROFIT PUBLISHER OF CONSUMER REPORTS

Testimony of

Charles Bell, Programs Director

Consumers Union

Before the

Subcommittee on Commerce, Trade and

Consumer Protection

U.S. House of Representatives

Hearing on

Proposed Legislation to Require Disclosures by

Coin and Metal Bullion Dealers

September 23, 2010

101 Truman Avenue, Yonkers, NY 10703-1057 • (914) 378-2000

Introduction

Mr. Chairman, Members of the Committee:

Thank you very much for the invitation to testify on ways to protect consumers who purchase gold coins and metal bullion. We commend you for holding this hearing to focus attention on ways to protect consumers and encourage a safer marketplace.

Consumers Union[1] is the independent, non-profit publisher of *Consumer Reports*, *ConsumerReports.org*, and the *Consumerist.com* blog, which empower consumers by informing and educating them about the top consumer issues of the day. We reach over 4 million print subscribers and 3 million online subscribers, and many more people through pass-along readership, free online content and television and radio. As part of our work, we regularly research and report on misleading and deceptive practices that affect consumers. We report on scams and fraud both to alert consumers, so they can protect themselves; and to alert law enforcement agencies and policymakers, so they can take action to directly curtail and stop these unethical, deceptive and/or fraudulent practices.

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[1] Consumers Union, the nonprofit publisher of *Consumer Reports*, is an expert, independent organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. To achieve this mission, we test, inform, and protect. To maintain our independence and impartiality, Consumers Union accepts no outside advertising, no free test samples, and has no agenda other than the interests of consumers. Consumers Union supports itself through the sale of our information products and services, individual contributions, and a few noncommercial grants.

Consumer Problems in Gold Coin & Bullion Transactions

Over the last several years, according to news reports and complaints received by the regulators and law enforcement agencies, consumers have experienced significant problems in transactions related to gold coins and metal bullion which we think are worthy of attention by your Subcommittee. Many of the problems that have come to public light are related to high-pressure sales tactics that entice consumers to purchase coins that have high mark-ups, that turn out to have much less resale value than the customer initially expected.

Consumers are also at risk because sellers of gold coins and bullion may not be licensed or regulated either by the Securities and Exchange Commission (SEC) or the Commodities Futures Trading Commission (CFTC).[2] And sales representatives may not be licensed as investment advisors, even though they present their products as an "investment." Coin and bullion sellers are subject to relatively limited public oversight, and state consumer protection authorities may only be able to offer limited help for consumers who feel they have been defrauded.

State securities regulators have stated that their authority to provide oversight of coin sales is limited:

> "Trading in coins has been an area that's very, very difficult for regulators to wrap their arms around," confirms Maine securities administrator Judith Shaw. As the economy turned sour in 2008, Shaw's office saw a large uptick in the aggressive telemarketing of gold, prompting her to issue a consumer advisory about "potential scams and pitfalls" being perpetrated by "numerous shady companies operating on the margins of this industry."[3]

Through our publications, Consumers Union has urged consumers to be cautious in buying gold coins, and to be particularly wary of high-pressure sales tactics over the phone. We generally advise consumers who are interested in investing in gold as a portion of their portfolio not to buy

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[2] Mencimer, Stephanie. "The Golden Fleece," Mother Jones, July-August, 2010, Vol. 25, No. 4, p. 25.
[3] Op cit. 2.

physical gold, but instead to purchase shares in an exchange-traded fund (ETF) that purchases gold for clients and holds it in a bank, because of lower trading fees and annual expenses.[4] By contrast, companies selling gold coins may mark them up by significant margins of 20-30 percent or more, as noted above, such that it will take many months or years for consumers to even break even.

In August 2006, Texas Attorney General Greg Abbott issued an alert warning consumers to be cautious about investing in gold coins.

> Recently we heard from a number of consumers who spent thousands of dollars each to purchase gold coins which they were assured by the "consultants" selling them that they were a wise investment. Often these high pressure pitches were directed at seniors who would use their savings or liquidate other assets to buy coins which they were often told would double or triple in value in a very short time.
>
> However, when some of these consumers purchased the coins and took them to independent appraisers, they were informed that they paid three times or even more the fair market value of the pieces. Many of these consumers were unsuccessful in getting refunds.[5]

Similar consumer advisories have been issued by Attorney Generals and securities regulators in other states, warning consumers to be cautious about transactions involving gold coins.

Between early 2006 until May 2010, the FTC received 17 individual complaints about sales practices at one major company, Goldline International, involving the purchase of gold coins and bullion. Many of the customers tell a similar story of being encouraged to buy foreign gold coins with high markups that they later determined were a poor value.

In February, 2008, the Washington Attorney General's office filed suit against Northwest Territorial Mint for deceptive sales practices, responding to over 82 complaints from customers

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[4] "Can You Trust Goldline's advice?" Consumer Reports Money Advisor, August 2010, p. 14.
[5] Office of the Attorney General of Texas, "Senior Alert: Consumers Should Do Their Homework Before Investing in Gold Coins," August 1, 2006, available at:
http://www.oag.state.tx.us/alerts/alerts_view_alpha.php?id=142&type=2 (accessed 9/21/10)

who said the gold or silver they received from the company was worth less than they paid. The suit also accused the company of misrepresenting delivery dates, enforcing an unfair refund policy and failing to respond to consumer complaints.[6] In September, 2008, the parties settled the lawsuit, with Northwest Territorial Mint paying a $20,000 fine and $38,000 in attorneys' fees. The company did not admit any wrongdoing in the settlement, but agreed to fully disclose its delivery and refund policies, deliver products on time and offer refunds for delayed shipments. Consumers who request refunds for bullion orders that have not arrived by a promised date will be compensated at the market price or purchase price, whichever is higher.[7]

In May 2010, Rep. Anthony Weiner issued a report raising concerns about the high mark-up of coins sold by Goldline International, finding on average that markups were 90% above the melt value of the coin, and that many coins were significantly higher-priced than coins sold by leading competitors. According to Rep. Weiner's report, the value of such coins would need to double for consumers to even break even on their "investment." The report also raised concerns that consumers were being misled by sales personnel who misrepresent themselves as investment advisors, and make exaggerated claims about a failing economy and the potential for other forms of gold to be confiscated by the government.[8]

In July, 2010, the Santa Monica, California District Attorney's office opened an investigation into two companies, Goldline International and the Superior Gold Group, both

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[6] Office of the Attorney General, State of Washington, "Attorney General Sues Northwest Territorial Mint for deceptive sales practices," February 6, 2008, available at: http://www.atg.wa.gov/pressrelease.aspx?id=18988 (accessed 9/21/10)

[7] Office of the Attorney General, State of Washington, "Attorney General Settles Case with Northwest Territorial Mint," September 18, 2008, available at: http://www.atg.wa.gov/pressrelease.aspx?id=20994 (accessed 9/21/10)

[8] Weiner, Congressman Anthony D. "As Seen on TV: An Investigation of Goldline International," 5/17/2010.

based in Santa Monica. The Los Angeles County District Attorney's Office is also involved in the investigation.[9] According to Deputy City Attorney Adam Radinsky:

> There are two main types of complaints that we're seeing. One is that customers say that they were lied to and misled in entering into their purchases of gold coins. And the other group is saying that they received something different than what they had ordered.[10]

The investigation includes complaints from over 100

consumers, according to Radinsky.[11]

While the number of complaints may seem small as a portion of business transacted by the coin and bullion industry, it is generally accepted in most customer relations work that for each official complaint lodged with the company or government authorities, there are a significant number of other customers who experienced similar problems but did not complain. Further, we believe that the bitter disappointment expressed by at least some customers in the FTC complaints and media reports indicate that there is a significant potential for customer misunderstandings about the value of the coins they are purchasing, and fees and services related to the transactions. Finally, because of the significant amount of money at stake in some transactions involving gold coins, which consumers do in fact regard as an investment, there is a strong case for ensuring that consumers get full and complete details about the value of the products they are buying.

We are also concerned that the prospective purchase of gold coins and bullion may be an impulsive decision for some consumers, who may be responding to well-placed TV or Internet ad. While this does not excuse consumers from the responsibility to look out for their own

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[9] Assis, Claudia. "Bullion Buyers Bank on Gold Coins," Dow Jones Marketwatch, Weekend Investor, July 23, 2010.

[10] Ross, Brian. "Goldline Under Investigation," Nightline, ABC News Transcript, July 19, 2010.

[11] Mencimer, Stephanie. "Goldline Finally Under Investigation," Mother Jones, July 19, 2010, available at http://motherjones.com/mojo/2010/07/goldline-finally-under-investigation?utm_source=feedburner (accessed 9/21/10).

economic interests, it does raise the possibility that large numbers of customers, particularly in times of high gold prices and/or economic distress, may be enticed through slick advertisements to quickly agree to Internet or telephone offers without carefully considering their options.

Consumers may also not realize that companies that spend heavily on national TV and Internet advertising may adopt pricing practices, such as higher mark-ups for coins and bullion, or engage in more aggressive sales tactics. Such business choices lead to business models that may be less than consumer-friendly, underscoring the need for clear disclosures and customer protections. For example, one former industry sales representative has written a book alleging that sales representatives are paid high commissions to switch customers to products with high mark-ups, regardless of what the customer seeks to buy.[12] So, for example, a customer who calls a dealer seeking to buy bullion coins with a low mark-up may be repeatedly pressed with offers to buy higher mark-up "European coins" such as Swiss francs or French francs. Sophisticated traders of gold and precious metals may quickly recognize such sales tactics, but relatively less sophisticated customers recruited through extensive ad campaigns may be susceptible to sharp bait-and-switch marketing practices.

In its 2006 alert, the Office of the Texas Attorney General warned consumers to:

> "Be especially wary of those who want to sell you gold insisting that you make an immediate decision and who use scare tactics or make extravagant promises about how quickly they will rise in value. Always compare prices with several dealers before making your selection. Also, before you buy make sure you get the seller's refund [policy] and all other terms in writing."

We think this is very good advice for consumers. Ultimately, consumers must be vigilant and appropriately skeptical of seller representations, and resist aggressive pitches to make decisions quickly without fully thinking through their options. They need to understand that

[12] Eberhardt, Doug. "Buy Gold and Silver Safely," Doug Eberhardt, publisher, p 186-202.

sales representatives may be receiving generous personal compensation for hyping or exaggerating the benefits of particular coins or bullion products.

At the same time, competitive markets depend on the free and unimpeded flow of information between buyers and sellers. Strong disclosure requirements are good for both buyers and sellers because they help ensure that both parties to the transaction are fully informed about the value of the product, fees and contract terms.

Consumers Would Benefit from Improved Disclosures in Gold Coin Sales

Consumers Union, publisher of Consumer Reports, believes consumers would benefit from highly prominent, conspicuous disclosures in the sale of coins and precious metal bullion, as proposed in the draft legislation introduced by Rep. Anthony Weiner. These disclosures should include the item's purchase price, melt value and reasonable resale price, as well as any fees that the customer will incur if the purchase is completed. We also strongly favor provisions to make such disclosures orally to consumers if sales are being solicited by telephone, and to ensure that the FTC and state Attorneys General have the appropriate authority to investigate deceptive practices in the sale of coin and precious metal bullion.

By requiring the upfront disclosure of the price differential and melt value, particularly in phone sales, this proposed bill would ensure that consumers are fully aware of the specific value for the item they are buying at the point of sale. This proposed legislation creates fair rules of the road to give consumers information for coin and bullion purchases, and clarifies the channels of communication so both the consumer and the purchaser have appropriate rules and protocols to minimize disputes and bad outcomes.

While improved disclosure will not eliminate all potential problems with high-pressure and aggressive sales tactics, we think this legislation also sends a strong signal that informed consent must be a central element in these transactions, and the companies should engage in responsible business practices. It also puts companies on notice that unfair and deceptive practices are not acceptable and will be investigated by the FTC and state Attorneys General. For these reasons, Consumers Union strongly supports this bill, and urges its swift passage by the Congress.

Conclusion

Mr. Chairman, Members of the Committee, thank you very much for the opportunity to testify here today about this critically important consumer protection issue. We thank you for your efforts to protect consumers in these tough economic times, and we look forward to working with you as you move forward in addressing these issues.

Mr. RUSH. The Chair thanks the witness.

And now the Chair recognizes Mr. Carter for 5 minutes for the purposes of an opening statement.

TESTIMONY OF SCOTT CARTER

Mr. CARTER. Mr. Chairman and members of the committee, I am Scott Carter, Executive Vice President of Goldline International. Thank you for this opportunity to discuss Goldline's role as an industry leader in the precious metals and rare coins markets.

Goldline has long supported the comprehensive disclosure of information for an individual to make an informed decision about acquiring precious metals and rare coins. Indeed, Goldline believes its disclosures represent the best practices in an industry of more than 5,000 precious metals and rare coin dealers. These disclosures include clear examples and explanations of the risks and costs associated with acquiring precious metals, information which we provide throughout the sales process.

In the highly competitive precious metals industry, there are numerous sources available to compare prices and policies. This intensive competition coupled with existing regulation protects individuals when choosing if and where they acquire precious metals. We believe that H.R. 6149 does not improve the information currently required under regulations and imposes requirements that cannot be met by the industry. As presently written, the proposed legislation appears unworkable and may actually result in inaccurate information being conveyed to the consumer.

Goldline has been offering precious metals to individuals since 1960 and has grown to more than 300,000 full-time employees. Over the years Goldline has assisted thousands of people to acquire and liquidate precious metals and rare coins. We are proud to be rated A+ from the Better Business Bureau.

Goldline provides each of our clients with a risk disclosure booklet, Coin Facts for Investors and Collectors to Consider. Coin Facts is written in a large, easy-to-read font and contains important information regarding the acquisition of precious metals. In Coin Facts, Goldline explains its pricing policies in extensive detail and provides a mathematical example to ensure its clients understand how this pricing works. Goldline also provides important information about its sales staff and commission structure in Coin Facts.

Also, even though gold prices have increased every year in the past 10 years, like any asset, precious metals can rise and fall in value. Accordingly, Coin Facts clearly spells out the risks of owning precious metals for a potential client. For example, we recommend that coins and bullion are appropriate for no more than 5 to 20 percent of a portfolio and we believe that assets should be held for at least 3 to 5 years, preferably 5 to 10 years. Goldline's marketing and risk disclosure materials encourage prospective to conduct their due diligence before they acquire any product. Additionally, Goldline discloses its pricing, fees and risks involved in acquiring precious metals and rare coins in its account and storage agreement which all clients must read and sign before they finalize their purchases.

The entire sales process beginning with an individual's initial inquiry to Goldline and culminating with an expiration of the applicable cancellation and refund period often occurs in a span of days or weeks. During this time, Goldline clients can easily conduct their own due diligence to compare products, prices and policies among the thousands of competing precious metals dealers.

In addition to providing comprehensive information to Goldline customers about the risks and costs of acquiring precious metals, Goldline has an internal compliance program to ensure best practices among its sales staff. This compliance program was reviewed by lawyers and former senior regulators with expertise in consumer protection, telemarketing, numismatics and regulatory compliance. Goldline's policies are administered by a full-time compliance department with regular input and assistance from outside counsel. Among other things, Goldline's compliance program trains the sales staff about the requirements of the FTC's telemarketing sales rule, Do Not Call obligations, state telemarketing requirements including seller identification and disclosures, and the importance of adhering to Goldline's compliance rules and code of contact.

Mr. Chairman, in my written testimony I discuss our concerns about H.R. 6149 in greater detail. Today I specifically would like to note that the requirement in the bill that sellers disclose the reasonable resale value of a product would create an insurmountable burden on precious metals dealers and likely would mislead consumers.

Mr. Chairman and members of the committee, thank you, and I would be happy to answer any questions from the committee.

[The prepared statement of Mr. Carter follows:]

Statement of

Scott Carter

Executive Vice President

Goldline International, Inc.

Before the

House Committee on Energy and Commerce

Subcommittee on Commerce, Trade, and Consumer Protection

Regarding H.R. 6149

The "Coin and Precious Metal Disclosure Act"

September 23, 2010

I. Introduction

Mr. Chairman and members of the Committee, I am Scott Carter, Executive Vice President of Goldline International. I am pleased to have this opportunity to provide information concerning the proposed legislation as well as Goldline's role as an industry leader in the precious metals and rare coin markets.

As I will discuss in detail below, Goldline has long supported the comprehensive disclosure of information necessary for an individual to make an informed decision about acquiring precious metals and rare coins. Indeed, Goldline believes its disclosures represent best practices in an industry of more than five thousand precious metals and rare coin dealers. These disclosures include clear examples and explanations of the risks and costs associated with acquiring precious metals, information which we provide throughout the sales process.

Because the precious metals industry is highly competitive, there are numerous sources available to help individuals compare prices and policies among a number of dealers both locally and throughout the United States. With many dealers offering products online, consumers have access to multiple vendors who aggressively compete for their business.

We also believe that the existing federal regulation, coupled with the intense competition in our industry, offers the protection that individuals require when choosing if and where they acquire precious metals. As I explain below, the proposed legislation does not improve the information currently required under existing regulation and imposes requirements that cannot be met by the industry. As such, the proposed legislation appears unworkable and may actually result in inaccurate information being conveyed to the consumer.

II. The Precious Metals Markets

Goldline specializes in selling physical precious metals in coin or bar form which can be delivered to the customer or, where the customer chooses and State law allows, stored with an independent storage facility. Although there has been no systematic survey, we have been advised there are likely more than five thousand coin and precious metals dealers throughout the United States who sell many of the products offered by Goldline. Since there are few barriers to entry into the physical precious metals market, we have seen a significant increase in new businesses and competition as gold prices have increased and new records reached.

In addition to acquiring physical precious metals, investors may choose to invest in precious metals through other means. These include Exchange Traded Funds, or ETFs, futures and mining stocks.

While Goldline believes it is among the largest retail sellers of physical gold in the United States given the number of its employees, based upon information provided by a precious metals consultancy, our annual sales represent less than 2% of the total gold market.

III. Goldline's History, Employees and Growth

Goldline has been offering precious metals to individuals since 1960 when it began as Deak Investor Services. In 1998, Goldline acquired Dreyfus Precious Metals, Inc., the precious metal brokerage and storage subsidiary of the Dreyfus Corporation.

When Goldline relocated to California in 1992, we expanded our products to include rare and collectible coins and currency. In all, Goldline has offered more than one thousand four hundred (1400) different precious metals and rare coin products.

Goldline has grown from three employees to more than 300 full time employees. We offer a healthy work environment for our employees which includes health, dental and life insurance, a 401(k) plan, support for alternative commuting choices and Health Savings Accounts.

Over the years, Goldline has assisted thousands of people in acquiring and liquidating precious metals and rare coins. In that time, due to several factors including our repeat business and excellent customer relations, we have become the top 20% fastest growing private companies in the United States as ranked by Inc. magazine. We are proud to be rated A+ from the Better Business Bureau.

IV. Goldline's Commitment to Consumer Education, Disclosure and Compliance

Goldline is committed to providing the important information that clients need when making purchasing decisions. Thus, Goldline offers among the most comprehensive and clearly written disclosures in the precious metals industry. These disclosures include detailed information regarding Goldline's sales staff, the risks of investing in precious metals, and Goldline's pricing policies.

Goldline's disclosures begin with its corporate brochure which states:

> Goldline provides each client with a risk disclosure booklet, *Coin Facts for Investors and Collectors to Consider*, which is located in the attached pocket. This risk disclosure contains important information for each client to consider before making his or her first acquisition. You can review this booklet online at www.Goldline.com. Additional copies are available by calling 1-800-827-4653.

Coin Facts is written in a large, easy to read font and contains important information regarding the acquisition of precious metals. Indeed, we believe our 13 point font size for *Coin Facts* is larger than disclosures found in almost every comparable industry.

In *Coin Facts*, Goldline explains its pricing policies in extensive detail and provides a mathematical example to ensure its clients understand how this pricing works.

Coin Facts states:

OUR PRICES: Our prices are set internally based upon our analysis of a variety of factors and are not necessarily tied to the prices quoted by any other organization. The prices charged by Goldline for coins are subject to change based on market conditions. Our total profit before operating expenses may be more or less than our spread based on various factors including, but not limited to: quantity purchasing, favorable or unfavorable purchases, and positive and negative market conditions. Goldline acts as a principal, not as a broker, and generally owns the coins and precious metals it buys and sells.

There is a price differential or "spread" between our selling price (the "ask" price) and our buy-back price (the "bid" price). This is often referred to as a "transaction cost."

A typical spread on our most common bullion coins (e.g. Canadian Maple Leaf or South African Krugerrand gold coins) may range from approximately 5% to 20% depending on the coin though spreads may increase based upon market conditions, availability and demand. Our spread on semi-numismatic coins, rare or numismatic coins and rare currency currently ranges from 30% to 35%. Examples of coins which have a 30% to 35% spread include European gold coins such as the Swiss 20 Franc, the PCGS certified "First Strike®" coins, coins which have been encapsulated by a grading service such as PCGS or NGC, the Morgan and Peace silver dollars in all grades, and the Walking Liberty, Franklin and Kennedy silver half-dollars in all grades. Spreads may change based upon market conditions, availability and demand.

With the exception of the most common 1 oz. bullion coins, Goldline charges clients its numismatic spread, which currently ranges from 30% to 35%, on coins and currency. To earn a profit upon resale to us, your coins, currency or bullion must appreciate sufficiently to overcome this price differential.

To illustrate how this spread works, consider the following example. If the spread on a coin is 35% and Goldline's ask/sell price is $500 for the coin, then Goldline's bid/buy price is $325. Your coin must appreciate more than $175 to earn a profit. If you choose to sell your coin back to Goldline, you must also pay a 1% liquidation fee (the minimum liquidation fee is $15)....[1]

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[1] Goldline provides a FAQ on its website which also discusses its spread and pricing:

12. What is the cost of my precious metals? How do you make your money?

Goldline has a spread or price difference between our selling price, called the "ask," and our buy-back price, called the "bid." That spread varies depending on the type of coin you acquire, with the most common bullion coins like the American Eagle or Canadian Maple Leaf having the lowest spreads and all other coins having higher spreads. Spreads on bullion coins are generally 5-20% and 30-35% for all other coins. There is also a 1% liquidation fee when you sell your coins back to Goldline. You should read our risk disclosure booklet, Coin Facts for Investors and Collectors to Consider, and our Account and Storage Agreement, which describe the various spreads and will tell you how the spread works.

Goldline also provides important information about its sales staff and commission structure:

> **ACCOUNT EXECUTIVES**: The Account Executives at Goldline are generally commissioned salespersons. Their commissions are usually greatest on rare coins and semi-numismatic coins and least on bullion related products. Their work experience, knowledge, background, and training vary widely. They and/or Goldline may receive, from time to time, undisclosed compensation for recommending specific coin or currency products (including but not limited to contests, cooperative advertising, and trading profits in coins that they may own and/or sell). Goldline's employees are not licensed as investment advisors and are not authorized to recommend the purchase or sale of any product or investment other than the products specifically sold by Goldline. Check with a licensed professional with expertise in a particular market before making a decision to buy or sell any security, bond, annuity or financial instrument. Further, Account Executives are not tax advisors and may not provide any advice regarding taxability, tax rates or related issues for any product Goldline sells. You should consult with your tax advisor regarding any questions about the tax implications of buying or selling bullion, rare coins or rare currency.

In the past ten years, spot gold prices have increased every year. Nonetheless, precious metals, like any investment, can rise and fall in value. Accordingly, *Coin Facts* clearly spells out the risks of investing in precious metals for the potential client.

> **RISK:** All investments involve risk - coins, currency and bullion are no exception. The precious metals, rare coin and rare currency markets are speculative, unregulated and volatile and prices for these items may rise or fall over time. Goldline does not guarantee that any client buying for investment purposes will be able to sell for a profit in the future.
>
> The value of a bullion coin (e.g., Canadian Maple Leaf or South African Krugerrand gold coins) is largely determined by the current spot or market price of bullion. This price fluctuates throughout the trading day.
>
> The value of a numismatic or rare coin is determined by multiple factors which can and do fluctuate independently from bullion prices. These factors include: the perceived scarcity of the coin, its quality, current demand, market sentiment, and economic factors.
>
> Bullion, rare coins and rare currency can go down as well as up in value. These items may not be suitable for everyone. Goldline does not determine the suitability of any specific person to purchase rare coins, bullion or rare currency. You should consult with your independent financial advisor regarding whether an investment in rare coins, bullion or rare currency is right for you. You should not acquire any products from Goldline if you are not competent or qualified to make your own financial decisions. You should obtain a thorough understanding of the coin and bullion products before you acquire these products as a collector or investor.

> The investment value of a rare coin depends in large part on the price you pay. If you are acquiring any of Goldline's products as an investment, you should evaluate its current market value, potential for appreciation and liquidity and consult independent sources regarding these factors.
>
> Since rare coins, bullion and rare currency can decline in value, you should have adequate cash reserves and disposable income before considering acquiring a coin, currency or precious metals.
>
> We do not recommend early withdrawal from accounts or securities which may result in substantial penalties or fees. You should consult with your independent financial advisor before disposing of any security, annuity, Certificate of Deposit or other investment to acquire rare coins, currency or bullion.

Coin Facts encourages prospective clients to conduct their due diligence before they acquire any product. At the very outset, *Coin Facts* provides:

> *Conduct your due diligence before you acquire rare coins, bullion and rare currency from any firm.*

(Original emphasis.)

Goldline reiterates this admonishment in its Summary:

> **SUMMARY:** We strongly recommend that you acquire a sound understanding of precious metals, coins, and their markets <u>before</u> you make your first purchase. Be prepared to invest some time and effort into understanding the market and the grading of your coins or currency. Do not commit more than 5% to 20% of your investment funds to rare coins or precious metals. Protect your future with a diversified portfolio that meets your objectives for safety, liquidity, and growth. Be prepared to hold your coin, bullion and currency investments for a minimum of 3 to 5 years, recognizing that all markets have their ups and downs. Perform your due diligence and let reason and common sense be your guide.

(Original emphasis.)

Goldline repeats much of the information from *Coin Facts* in the Account and Storage Agreement which every client must read and sign to finalize his or her purchase. For example, the Account and Storage Agreement states:

> **Considerations for Investors**...6. Goldline employees may from time to time discuss the general direction of various financial markets. Neither Goldline nor its representatives can guarantee any market movement. Further, Goldline employees are not licensed as investment advisors and they are not making any specific recommendations concerning stocks or any other form of investment. Goldline and its Account Executives are not agents for Client, have different financial interests and incentives from Client and owe no

> fiduciary duty to Client. Account Executives are generally commissioned salespeople whose commissions are greatest on numismatic and semi-numismatic items and least on bullion related products. They may receive cash and other undisclosed compensation from Goldline for recommending specific coin or currency products. Client will check with a licensed professional with expertise in a particular market before making a decision to buy or sell.

Goldline clients have their purchases of $1,000 or more confirmed by a client service representative who reviews the products being purchased, the unit price and the total price. The client service representative also reiterates that the purchase is subject to Goldline's Account and Storage Agreement.

Every client receives a written confirmation which identifies the products purchased, the unit price, and the total cost of the transaction. The written confirmation also reiterates Goldline's risk disclosure information. Every order is then checked at least twice before shipping to ensure accuracy.

The entire sales process, beginning with an individual's initial inquiry to Goldline and culminating with expiration of the applicable cancellation and refund period, often occurs in a span of days or weeks. During this time, Goldline clients can independently and easily conduct their own due diligence to compare products, prices and policies among the thousands of competing precious metals dealers.

V. Goldline's Internal Compliance Program

In addition to providing comprehensive information to Goldline customers about the risks and costs of acquiring precious metals, Goldline has an internal compliance program to ensure best practices among its sales staff. This compliance program was reviewed by lawyers and former senior regulators with expertise in consumer protection, telemarketing, numismatics and regulatory compliance. Goldline's policies are administered by a full-time compliance department with regular input and assistance from outside counsel.

Among other things, Goldline's compliance program trains the sales staff about the requirements of the FTC's Telemarketing Sales Rule, Do Not Call obligations, State telemarketing requirements including seller identification and disclosures, and the importance of adhering to Goldline's compliance rules and Code of Conduct.

All sales members must participate in regular compliance training. Goldline both internally monitors and retains outside auditors to monitor compliance with these policies. Goldline also provides one-on-one counseling and training where issues or concerns arise. To the best of Goldline's knowledge, no other retail precious metals company has devoted more resources or is more committed to its compliance programs.

VI. Goldline's Commitment to Customer Service and Satisfaction

Goldline recognizes that many people are new to the precious metals markets and require time and education before completing a purchase. Thus, in addition to the written materials provided to every prospective client (we should note that Goldline does not "cold call" any prospective client), Goldline also provides a wealth of free information on its website at www.Goldline.com including live spot prices for gold, silver and platinum, links to news articles on precious metals, and detailed coin descriptions of the most popular coins offered by Goldline. Further, there are a number of free resources available from both independent third parties such as the World Gold Council and thebulliondesk.com as well as information provided by the thousands of competing dealers throughout the United States.

Additionally, clients may choose to acquire precious metals from Goldline's online store rather than speak directly to an Account Executive. Prospective clients can also readily check prices from the online store and compare them to competitors.

Goldline provides all first-time clients who purchase semi-numismatic or numismatic coins with an unconditional seven (7) day cancellation period (or longer depending on applicable state law) that provides a full refund. This allows clients additional time to compare prices, conduct additional due diligence and consult with others about their purchase.

During the sales process, the overwhelming majority of clients will discuss a possible purchase from Goldline over several conversations which may occur days, weeks or months apart before making a decision to buy. In those unusual cases where a client chooses to acquire precious metals before first receiving Goldline's information and risk disclosure packet, Goldline sends these materials via FedEx to the client to ensure they have the information they need before finalizing the transaction. We also direct these clients to our website where they can read *Coin Facts* and our Account and Storage Agreement online.

As an additional safety valve for clients, every client must review and sign our Account and Storage Agreement before their first purchase is finalized. This agreement is available both in hard copy and online. The client chooses how to review and sign this agreement and does so in the privacy of their home or office. If for any reason, the client decides not to sign this agreement, the purchase is cancelled and any money paid is fully refunded.

Goldline's commitment to customer service does not end at the time of sale. We provide a concierge service which is headed by a director level employee to answer any client questions or concerns. Goldline will address every client concern brought to its attention regardless of the size of the order or the time of the purchase. The Better Business Bureau offers this statement regarding Goldline:

> This company has been accredited since 01/04/1994 and we are satisfied that it honors its commitment. The company has agreed to uphold our accreditation standards, which include a commitment to act in accordance with ethical business practices and to respond to customer complaints....Our complaint history for this company shows the company gave proper consideration to complaints presented by the Bureau.

Although both Goldline and the client's obligations are set forth in the Account and Storage Agreement, Goldline is asked on occasion to provide an exception such as extending a refund period or changing the quantity or type of product acquired. Rather than stand on the parties' written agreement, Goldline will always work with the client to determine what accommodations can be made. Thus, Goldline often goes beyond the terms of the contract as part of its commitment to customer service.

Our commitment to customer service is reflected in the relatively few complaints submitted to agencies such as the BBB and the FTC. Over the past four years, Goldline has received forty-eight complaints from the BBB which represent less than $1/10^{th}$ of 1% of our total transactions (buys and sells) during this same time period. We also reached an accommodation with each of these clients in more than 85% of the cases.

VII. Goldline's Advertising

Goldline, like most successful businesses, advertises through a variety of marketing channels directed to those people who may be interested in its products. This includes television, radio, print and internet marketing.

The decision on where to advertise is based upon sound business decisions, not political ideology. Currently, the most popular talk radio shows in the United States are hosted by conservative commentators such as Messr. Beck, Levin and Thompson, and Ms. Ingraham. The demographics of these radio programs strongly favor those who are inclined to diversify their portfolios with precious metals. (This is best exemplified by the number of competitors who advertise among these same marketing channels.) The radio hosts themselves share an interest in owning precious metals, an important consideration when deciding where to advertise.

By that same token, Goldline's choice of advertising is not limited to a narrow political spectrum. Before his untimely death, Goldline's principal spokesperson was Jay Johnson, a former Mint Director and Democratic Congressman. Mr. Johnson shared a firm belief that precious metals were an important component of a diversified portfolio. Mr. Johnson was also an avid coin collector who wrote and spoke about numismatics.

Goldline also advertises with other major networks including CNBC, History International and CNN. Goldline has advertised with approximately 14 different networks within the past 12 months.

Goldline's advertising focuses on its most popular products including the Swiss 20 Franc and American Eagle proof coins. All of its advertising is reviewed by outside counsel for compliance with the FTC rules governing truthful advertising. No promises or guarantees of profit are ever made and Goldline consistently advises prospective clients to review Goldline's risk disclosure materials prior to purchase.

VIII. Concerns Regarding the Proposed Legislation

HR 6149, "The Precious Coins and Bullion Disclosure Act" (the "Act"), requires coin and precious metals dealers to disclose the following information:

> (1) Any fee that is or may be incurred by the customer if the sale of the coin or precious metal bullion were to be consummated.
>
> (2) The purchase price, the melt value, and the reasonable resale value of the coin or precious metal bullion.

The Act also provides the following definitions:

> (1) the term ''coin or precious metal dealer'' means any person that sells or offer for sale for investment purposes gold coins or bullion or coins or bullion made of other precious metals;
>
> (2) the term ''melt-value'' means the reasonable estimated value of any coin or precious metal if such item were processed and refined; and
>
> (3) the term ''reasonable resale value'' means a reasonable price that the coin or precious metal dealer selling the coin or other precious metal determines that other coin or precious metal dealers would pay to purchase the coin or other precious metal from the consumer on the date that such coin or other precious metal is sold to the consumer.

The Act would exempt sales of rare and collectable coins "(1) the precious metal content of which constitutes only a limited or insignificant portion of the overall value of the coin; and (2) whose value is not affected by the increase or decline in the value of such precious metals."

I will discuss concerns with this legislation, as currently drafted, seriatim.

First, the requirement that precious metals dealers disclose any "fees" to be incurred is duplicative of the FTC's current requirement under the Telemarketing Sales Rule ("TSR") to disclose the total cost to purchase any goods. *See* TSR sec. 310.3(a)(1)(i). Similarly, the requirement that a seller disclose the "purchase price" of a product is presently covered under this same section of the TSR.

Second, the requirement that sellers disclose the "reasonable resale value" of a product will create an insurmountable burden on precious metals dealers. As noted above, the proposed legislation defines "reasonable resale value" as "a reasonable price that the coin or precious metal dealer selling the coin or other precious metal determines that other coin or precious metal dealers would pay to purchase the coin or other precious metal from the consumer on the date that such coin or other precious metal is sold to the consumer."

This definition incorrectly assumes that a precious metals dealer can readily determine what other precious metals dealers would pay (presumably on a wholesale basis) for a specific coin or bar. In contrast to commodities where a centralized market is available for reference, the physical precious metals market is highly fragmented and no uniform pricing structure is available. Indeed, prices may vary considerably among the thousands of precious metals dealers depending upon their own business models, inventory, liquidity and interest in a product. Some dealers may pay well below a product's melt value and later charge a minimal mark up on the retail sale while others may pay close to the melt value and charge a higher mark-up when selling to a retail customer. Determining on any given day what the "reasonable" wholesale price of a product will be among more than five thousand dealers is literally impossible.

This information also has the potential for misleading the customer. The precious metals markets, like many other markets, are highly speculative and volatile. Prices for products may vary considerably from day to day and from year to year. Suggesting to a customer that he or she will receive the wholesale value of a precious metals should they sell at a later date is highly misleading since, in all likelihood, the value of that product will change in the coming months and years.

Third, the definition of "precious metals dealer" as someone who offers to sells coins or bullion for investment purposes is problematic because of the difficulty in discerning what is offered for "investment purposes." While it is reasonable to assume someone acquiring a quantity of bullion, either in coin or bar form, is likely acquiring these precious metals with some investment intent, this same assumption is not necessarily appropriate for a sale of one or two coins or bars. The proposed legislation does not provide sufficient guidance to a precious metals dealer to know when a sale rises to the level of investment purposes.

We also note this proposed legislation apparently encompasses sellers of precious metals commodities. Currently, such sales are regulated by the Commodities Future Trading Commission ("CFTC"). These requirements may conflict with regulations imposed by the CFTC.

Finally, we are concerned that the proposed exemption for numismatic products is too narrow and will not exclude coins whose value is principally based upon factors such as condition, grade, scarcity and demand. The problem arises from the language "whose value is not affected by the increase or decline in the value of such precious metals." While the value of some numismatic coins is rarely affected by changes in the precious metals markets, many numismatic products are affected by such price changes, albeit far less so than other factors such as condition and demand. This is especially true for numismatic coins at lower Mint State grades and many numismatic silver coins, even at higher grades. As such, we believe the exemption will not properly exclude a number of numismatic products.

IX. Conclusion

Goldline recognizes the importance of providing relevant and timely information to individuals seeking to acquire precious metals. We have consistently sought to provide this information and believe we have led the industry in educating the general public on both the benefits and risks of acquiring precious metals.

We also believe that existing regulation and the highly competitive nature of the precious metals industry which extends well beyond the thousands of precious metals dealers to include those who offer futures, ETFs and mining stocks, offers the best means of ensuring individuals have all of the information they require to make informed buying decisions.

In contrast, the proposed legislation contains a number of problems which we believe will make it unworkable and potentially injurious to both the industry and consumers. These include the unworkable definition of "reasonable resale price" and the narrow exemption for numismatic products.

Goldline thanks the Subcommittee for holding this important hearing and giving me the opportunity to comment. I look forward to answering your questions.

Mr. RUSH. The Chair thanks the gentleman and now recognizes Dr. Beales for 5 minutes for the purposes of an opening statement.

TESTIMONY OF HOWARD BEALES

Mr. BEALES. Thank you, Mr. Chairman. My name is Howard Beales. I teach at the business school at George Washington University and I have long experience at the FTC. I directed the Bureau of Consumer Protection from 2001 through 2004 when we created the national Do Not Call Registry, one of the most popular government consumer protection measures ever undertaken. Both inside and outside the agency, I have studied the FTC's approach to consumer protection issues for over 30 years.

Thank you for asking me today to discuss these important issues. Although I have consulted with Goldline on issues relating to their marketing practices under the FTC Act, the views I express in this testimony are my own.

The cornerstone of the FTC's consumer protection mission is its fraud program through which the Commission has returned hundreds of millions of dollars to defrauded consumers. As the FTC has detailed, the agency has a long history of activity against deceptive investment claims. Common themes in these cases are false claims that high returns are virtually certain in a short period of time. The cases involving commodities also feature misrepresentations, usually expressed, of the relationship between the selling price and the market value of the item combined with grossly inflated prices.

Such claims are a far cry from Goldline's practices. Instead, Goldline's marketing and sales practices include extensive disclosures, encouraging consumers to carefully consider their purchases.

First, Goldline's advertising relies on consumers calling the company to get additional information. Typically, customers call with initial questions and call back several times over a period of days before making a purchase. Thus, consumers have both time and the opportunity to check out competing sellers and other sources of information. The fact that a sale typically takes several calls suggests that consumers are exercising the kind of due consideration that should be given to a purchase that is typically in the range of $15,000 to $20,000 for first-time buyers.

Goldline provides potential customers with a clear, well-written disclosure document, Coin Facts, explaining the market and the company's practices in detail. In my experience, Goldline's pamphlet is a vast improvement over the disclosure documents that typically accompany other investment opportunities. In addition, all first-time buyers of Goldline's higher-margin products have an unconditional cancellation period of at least seven days, providing significant time for any consumer to consider their potential purchase, compare prices and offerings, and access relevant information from readily available sources. Of course, even sophisticated consumers can be misled. Goldline, however, is very different from the type of company typically found engaging in deceptive investment promotions. A substantial fraction of its sales are repeat purchases, which only occurs when customers are satisfied with what they receive. Goldline also has an A+ rating from the Better Business Bureau.

Second, Goldline's advertising and sales material do not guarantee or promise a profit or a specific return. In contract to the quick profit claims that are the hallmark of past cases, Goldline advises consumers that rare coins and currency should be held for at least 3 to 5 years but preferably 5 to 10 years. Goldline makes no representation that it is selling at wholesale or at the lowest price. Instead, Goldline provides straightforward disclosures of its spreads. It also provides a very clear example of how this differential would affect a consumer's purchase of a coin from Goldline and how much that coin would have to increase in value for the consumer to earn a profit. Rather than illustrating a best-case scenario, the example is based on Goldline's maximum spread where the necessary appreciation is greatest.

Third, Goldline's advertising and sales practices are filled with sound caution. It advises consumers to balance their portfolio and place no more than 5 to 20 percent in precious metals. In short, Goldline is the antithesis of the get rich quick seller making gross misrepresentations so common in past FTC cases.

Under H.R. 6149, the bill would essentially require disclosures to reveal the seller's markup on the product. In other markets, we rely on competition to police seller markups. In retailing, for example, it is not disclosures of the market at full service department stores that keep markups slow; it is the competition from other department stores and other retailers such as Walmart. What matters to consumers is the cost of the transaction, not the seller's markup. As long as information about prices at competing sellers is readily available to consumers who are interested and it certainly is in the coin and precious metal market, there is no reason to disclose the seller's markup.

Although providing consumers with more information almost always sounds appealing, it can in fact create consumer confusion. For example, the FTC's Bureau of Economics conducted an experimental study of the effect of disclosing the yield spread premium in mortgage transactions, which is essentially part of a broker's compensation. When the disclosure was included, consumers apparently focused on the disclosure rather than the overall cost of the transaction. As a result, they were less able to identify the low-cost mortgage.

The reasonable resale value disclosure may create similar problems. Like the yield spread premium, it risks focusing consumer attention on an aspect of the transaction that is not relevant to the overall cost. Confusion seems particularly likely when the resale value is disclosed along with the melt value. The melt value is simply irrelevant because it will always be reflected in the reasonable resale value of any product whose value is tied to spot prices.

Moreover, in a market where prices change constantly, consumers may misunderstand what the reasonable resale value disclosure means. If consumers understand the disclosure as a claim that they can actually expect to resell the item at the disclosed price, they may be seriously misled. The risk of this misinterpretation is increased because consumers will almost inevitably assume that they are being provided with this information because it should be important in their decision.

The Federal Trade Commission has an important role as a referee in policing the market economy. Like other products and services, the best protection remains the common law principles that the Commission enforces. Goldline's practices are entirely consistent with these principles. The proposed legislation is at best unnecessary and it may in fact create consumer confusion.

Thank you again for the opportunity to testify today and I look forward to your questions.

[The prepared statement of Mr. Beales follows:]

Testimony of

J. Howard Beales, III

Professor of Strategic Management and Public Policy
George Washington University School of Business

Before the

Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce

U.S. House of Representatives

September 23, 2010

I. Introduction and qualifications

Mr. Chairman and members of the Committee, my name is Howard Beales. I am currently a professor of strategic management and public policy in the George Washington University School of Business.

I have long experience with the FTC, where I have held 5 different positions of progressively increasing responsibility. Most recently, I was the Director of the Bureau of Consumer Protection from 2001 through 2004. During my tenure, we created the National Do Not Call Registry, one of the most popular government consumer protection measures ever undertaken. We also launched an aggressive enforcement campaign against fraudulent infomercials, based on challenging false claims in federal court. Through these positions, as well as my academic writing on the FTC, I have studied the agency's approach to consumer protection issues for more than thirty years. I was one of the two principal staff draftsmen of the Deception Policy Statement and the Advertising Substantiation Policy Statement, the guiding documents for the Commission's approach to the consumer protection issues relevant to today's hearing, discussed in more detail below. I thank the Committee for asking me to discuss these important issues. Although I have consulted with Goldline on issues related to their marketing practices under the FTC Act, the views I express in this testimony are my own.

II. The FTC's Approach to Deception

The basic principles of the FTC's approach to advertising are well established. I first discuss two key documents detailing those principles, the Deception Policy Statement and the Advertising Substantiation Policy Statement. These statements apply to all of the

Commission's consumer protection activities, whether the product or service involves investments, dietary supplements, or well established consumer products.

Issued in 1983, the Commission's Deception Policy Statement stated that an act or practice is deceptive if it is likely to mislead consumers, acting reasonably in the circumstances, about a material issue. In adopting this statement, the Commission made clear that it was rejecting earlier case law inconsistent with this approach, including cases that allowed the Commission to condemn advertising based on unreasonable interpretations that ordinary consumers were unlikely to share. Moreover, the Commission made clear that it would always consider well-conducted external evidence, such as surveys of consumer interpretations, and would not ignore such evidence based on its own "expertise." Importantly, to be actionable, the challenged claim must be material, i.e., likely to affect the consumer's choice of or conduct regarding the product.

The Advertising Substantiation Policy Statement affirmed that advertisers must have a "reasonable basis" for objective claims about products or services. The Statement firmly roots the substantiation doctrine in the Commission's deception jurisprudence, noting that objective claims also carry an implication that the marketer has evidence to support the proposition. The amount of evidence necessary to constitute a reasonable basis depends on the specifics of the claim, balancing the risks of mistakenly prohibiting truthful claims against the costs of potentially allowing false claims.

The FTC has relied on the development of common law principles, supplemented with occasional rules and guides. The cornerstone of the FTC's consumer protection mission is the fraud program, through which the Commission has returned hundreds of millions of dollars to defrauded consumers.

Although many do not think of them as such, these common law principles *are* rules, providing a crucial part of the institutional framework that helps our market economy to function. In most circumstances, these common law rules provide both clear guidance to the business community and an adequate basis for FTC enforcement actions. The common law process is also well suited to develop new policy. For example, the Commission has used this process to formulate general rules to protect the security of sensitive consumer information.

III. The FTC Has a Long History of Activity Against Deceptive Investment Claims

The FTC has sued many companies making deceptive investment claims, including the sale of gemstones, oil and gas lease lotteries, cellular license lotteries, and rare coins. These cases covered a broad range of deceptive investment claims from guaranteeing the success and profitability of securing a license to the false grading of coins. As demonstrated by these cases, the FTC has sought to identify clear violations involving deceptive advertising and practices that mislead and in many cases provide patently false information. Many of these cases are prompted by the Commission receiving a disproportionately large number of significant consumer complaints about a particular company and its practices.

Let me briefly discuss these cases and their key factual allegations.

- **Gemstones Cases**

  The FTC challenged false claims that a diamond company was claiming its diamonds were a "risk-free investment" and that its prices were "below normal retail levels." (*FTC v. International Diamond Corp.* (1982)). It charged another company with falsely claiming that diamonds and rubies were highly liquid and often accepted as cash. (*FTC v. Thomas L. Baker, Inc., et al.* (1982)).

- **Oil and Gas Lease Lottery Cases**

  The Commission filed suit against a number of companies offering filing services for oil and gas leases that the U.S. Department of the Interior offered through a lottery system. In these cases, the defendants falsely represented the likelihood that a customer would obtain a lease, claimed that the customer would only be competing with a few individuals when in fact there were hundreds of applicants for each lease, and falsely claimed that they would make filings only on parcels known to have oil and gas. Misrepresentations of the likelihood of success are comment in many investment cases. (*See, e.g. FTC v. First Petroleum Corp. of America* (1982); *FTC v. J&R Marketing Corp. et al.* (1983); *FTC v. Leland Industries, Inc. et al.* (1983); *FTC v. Oil and Gas Corp. et al.* (1983)).

- **Cellular License Lottery Cases**

  The FTC also charged several companies with falsely representing the investment potential of cellular network licenses, and the likelihood or securing such licenses through a federal government lottery system. The companies charged falsely represented that consumers were practically guaranteed a license and made false claims about the profitability of the licenses. (*FTC v. American National Cellular, Inc. et al.* (1985); *FTC v. Continental Communication, Inc. et al.* (1988)).

- **Rare Coin Cases**

The Federal Trade Commission has challenged many firms involved in the sale of rare coins. In *FTC v. Rare Coins of Georgia, Inc. et al.* (1987), the FTC filed suit against two Georgia firms involved in the marketing or sale of silver coins. Among other violations, the companies issued grading certificates sold along with the coins that overstated the coins' quality and grade. Coins worth $30 to $60 were sold to investors for $300 to $400. In *FTC v. Security Rare Coins, Inc. et al.* (1989), the FTC filed suit against a New York firm and its president that sold coins as investments. Defendants claimed that "[t]here is virtually no limit to the gains that can be made," and projected returns between 200% and 850% over a period of 3-5 years for some coins. The defendants also allegedly claimed that this investment performance was "more than possible, it is probable." In *FTC v. Certified Rare Coin Galleries, Inc. et al.* (1989), the FTC challenged claims that coins were being sold at or near market value, when, in reality, the prices were routinely more than double the wholesale value of the coin. Similarly, in *FTC v. Oak Tree Numismatics, Inc. et al.* (1991), the FTC filed suit against three New Jersey firms and several individual defendants that claimed that the investments were low risk and that the coins were being sold at "impossibly low" prices with "low markups." In fact, the coins were sold at prices that were 7 or 8 times their market value.

Common themes in the Commission's investment cases are false claims that high returns are virtually certain in a short period of time. The cases involving commodities also feature misrepresentations, usually express, of the relationship between the selling price and the market value of the item, combined with grossly inflated prices. As discussed in the next section, such claims are a far cry from Goldline's practices.

IV. Practices and Claims the FTC Has Challenged Differ Dramatically From Goldline's Practices[1]

Goldline's advertising and sales practices do not resemble the FTC's cases against firms involved in the sale of rare coins, gemstones, oil and gas leases, and cellular licenses.

The basis of the FTC's actions for deceptive and misleading advertising or practices is just that -- they must be deceptive and misleading. Deceptive and misleading advertising or practices generally contain false guarantees, promises, or claims, and may involve outright fraud. Such deceptive advertising generally does not contain prominent disclosures for the consumer to consider before purchasing, nor other safeguards.

In contrast, Goldline's marketing and sales practices encompass extensive disclosures that encourage a consumer to consider carefully his or her purchase. As described in

[1] I reviewed a sampling of Goldline's radio and TV ads, as well as its printed marketing materials; risk disclosures booklet, *Coin Facts for Investors and Collectors to Consider*; Account and Storage Agreement, and related materials.

more detail below, Goldline's sales process and the characteristics of its buyers are not conducive to deceptive practices. Goldline does not make the kinds of claims that typify past FTC cases. Finally, the company provides clear disclosures and cautious advice.

1. Goldline's Sales Process and the Characteristics of its Buyers are Not Conducive to Deceptive Practices.

Goldline's advertising relies on consumers calling the company or visiting its website to get additional information. Goldline does not make "cold calls" to solicit customers who are not considering the products. Typically, customers call with initial questions, and call back several times over a period of days, and sometimes weeks or months, before making a purchase. Thus, they have both time and the opportunity to check out competing sellers and other sources of information. The fact that a sale typically takes several calls suggest that consumers are exercising the kind of due consideration that should be given to a purchase typically in the range of $15,000 to $20,000 for first time buyers.

Moreover, Goldline's typical customer likely understands the value of becoming informed and knows how to do so. The typical buyer is in a professional or technical job, and most buyers have a college education or some graduate school. Customers are disproportionately from high net worth households (over $250,000) and households with incomes of at least $90,000. The most common customer is 45 to 55 years old.

Goldline provides potential customers with a clear, well-written disclosure document, *Coin Facts for Investors and Collectors to Consider*, explaining the market and the company's practices in detail. In my experience, Goldline's pamphlet is a vast improvement over the disclosure documents that typically accompany other investment opportunities. In addition, all first-time buyers of Goldline's higher margin products have an unconditional seven-day cancellation period (longer in some states), providing significant time for any consumer to consider their potential purchase, compare prices and offerings among other precious metal sellers, and access information from readily available sources on the value, prices, and risks of rare coins and precious metals.

Even sophisticated customers, of course, can be misled. Goldline, however, is very different from the type of company typically found engaging in deceptive investment promotions. It has a 50-year history of offering precious metals to consumers. Roughly half of its sales are repeat purchases, which only occurs when customers are satisfied with the products and the service they have received. Goldline also has an A+ rating from the Better Business Bureau.

2. Goldline Does Not Make the Claims Typical in Past FTC Cases.

Goldline's advertising and sales materials do not guarantee or promise a profit or specific return. In contrast to the quick profit claims that are the hallmark of past cases, Goldline advises consumers that "rare coins and currency should be held for at least 3 to 5 years, and, preferably, 5 to 10 years (underlined in original)."

Goldline makes no representations that it is selling at wholesale or the "lowest price," unlike the advertising and practices found in many of the FTC's past cases. Instead, Goldline provides a straightforward disclosure that its spread on bullion coins ranges from 5 to 20 percent, and that its spread on semi-numismatic and numismatic coins is 30 to 35 percent. It also provides a very clear example of how this differential would affect a consumer's purchase of a coin from Goldline and how much that coin would have to increase in value for the consumer to earn a profit. Rather than illustrating a best case scenario, the example is based on Goldline's maximum spread, where the necessary appreciation is greatest. This is a meaningful explanation and illustrative example that consumers can readily understand.

Goldline generally uses the two largest coin grading services, Professional Coin Grading Service and Numismatic Guaranty Corporation, to grade and certify the coins it offers for sale. To my knowledge, there have been no allegations of overgrading involving Goldline.

3. Goldline Provides Clear Disclosures and Cautious Advice.

Goldline's advertising and sales practices are qualified in their representations and filled with sound cautions. Among others, these cautions include that consumers should consider their own investment needs, balance their portfolio, place no more than 5-20 percent of their portfolio in precious metals, and plan to keep any precious metal purchase for at least three to five years or longer, preferably five to ten years. Consumers are advised that because coins and bullion can decline in value, "you should have adequate cash reserves and disposable income before considering acquiring" such products. Many advertisements ask consumers to "read Goldline's important risk information about buying Gold to see if it is right for you."

Goldline provides clear written disclosures that it requires all customers to indicate they have read before completing their purchase from Goldline. Its disclosure document, *Coin Facts for Investors and Collectors to Consider*, is written in a large, easy to read font. These disclosures also are sent with all marketing materials, and are prominently available on Goldline's web site. Similar disclosures are part of every Goldline Account and Storage Agreement. Moreover, Goldline expressly advises consumers that its Account Executives are generally commissioned salesperson and that their commissions usually vary by the type of product they sell.

In short, Goldline is the antithesis of the "get rich quick" seller that uses frequent gross misrepresentations so common in past FTC cases.

V. The proposed legislation would do little to help consumers, and could even be harmful.

H.R. 6149, the Precious Coins and Bullion Disclosure Act, would require presale disclosure of any fees if the transaction is consummated, "the purchase price, the melt value, and the reasonable resale value of the coin or precious metal bullion," and other information that the FTC may require by rule. Disclosure of fees and the purchase price are already required under the FTC's Telemarketing Sales Rule, so the real issue is the disclosure of reasonable resale value and melt value. Disclosures must be clear and conspicuous, and, in telephone solicitations, made orally. Essentially, these disclosures would reveal the seller's markup on the product.

In every other market, we rely on competition to police seller markups. In retailing, for example, it is not disclosures of the markups at full service department stores that keeps markups low, it is competition from department stores and other retailers such as WalMart. What matters to consumers is the cost of the transaction, not the seller's markup. As long as information about prices at competing sellers is readily available to consumers who are interested, and it certainly is in the coin and precious metal markets, there is no reason to disclose the seller's markup.

Although providing consumers with more information almost always sounds appealing, it can in fact increase consumer confusion, rather than reducing problems. For example, the FTC's Bureau of Economics conducted an experimental study of the effect of disclosing the yield spread premium in mortgage transactions, which is essentially part of a mortgage broker's compensation for the transaction. When the disclosure was included, consumers apparently focused on the disclosure, rather than the overall cost of the transaction. As a result, they were less able to identify the low cost mortgage.[2]

The reasonable resale value disclosure in H.R. 6149 may create similar problems. Like the yield spread premium disclosure, it risks focusing consumer attention on an aspect of the transaction that is not relevant to the overall cost. Confusion seems particularly likely when the resale value is disclosed along with the melt value. The melt value is simply

[2] J. Lacko and J. Pappalardo, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment*, Bureau of Economics Staff Report, Washington: Federal Trade Commission (2004).

irrelevant, because it will always be reflected in the reasonable resale value of any product whose value is tied to spot prices.

Moreover, in a market where prices change constantly, consumers may misunderstand what the "reasonable resale value" disclosure means. For the consumer who expects to sell an investment position several years down the road, the price at a substantially different point in time is simply irrelevant. If consumers understand the disclosure as a claim that they can actually expect to resell the item at the disclosed price, they may be seriously misled. The risk of this misinterpretation is increased because consumers will almost inevitably assume they are being provided with this information because it should be important in their decision.

As drafted, the "reasonable resale value" disclosure is particularly burdensome to sellers. A seller must determine the price that *another* dealer would pay to purchase the item, *on the date* when the item is sold to the consumer. In a market where prices change continuously even within the course of a trading day, compliance would be exceedingly difficult. Unlike virtually all other disclosure requirements, this provision would require disclosures with the sale of a particular item that change every day, and that are different for every individual item sold.

To obtain "reasonable resale value" information, the industry may well develop mechanisms to share real time information on a daily basis. From an antitrust perspective, such information exchanges have frequently raised concerns because they may contribute to industry efforts to fix or stabilize prices. A reduction in price competition, particularly in the price dealers are will to pay to buy back coins, can hardly be in the interests of investors.

Finally, H.R. 6149 exempts the sale of collectable coins, if the precious metal content is a "limited or insignificant portion of the overall value," *and* "whose value is not affected by the increase or decline in the value of such precious metals." As a matter of economics, however, it is difficult to imagine a coin that would meet the literal terms of the second requirement. If the precious metal content is *any* portion of the overall value of the coin, as it most likely is, the price will be affected by changes in precious metal prices. If the metal content is a limited or insignificant portion of the overall value of the coin, changes in metal prices will likely have a limited or insignificant effect on the value of the coin, but they will have an effect. Thus, the second condition for exemption appears to take away what the first provision grants.

VI. Conclusion

The Federal Trade Commission has an important role as a referee in policing the market economy. Like other products and services, the best protection remains the common law principles that the Commission enforces. Goldline's practices are entirely consistent with these principles. The proposed legislation is at best unnecessary; and it may in fact create consumer confusion.

Mr. Chairman, thank you again for the opportunity to testify today. I look forward to answering any questions you may have.

Mr. RUSH. The Chair thanks the witnesses, and the Chair recognizes himself now for 5 minutes for the purposes of questioning the witnesses.

Ms. Greisman, the FTC has brought cases of these companies that sold overpriced or misgraded historic coins for investment purposes. Do you concur with that, that the FTC has brought cases against companies that have sold overpriced or misgraded historic coins for investment purposes? Is that a fact?

Ms. GREISMAN. That is correct. In fact, there have been 17 such cases dealing with what we allege to be fraud in connection with coins.

Mr. RUSH. Since 2005, the FTC has received approximately 850 complaints relating to coins and precious metals. In Mr. Carter's testimony, he stated that there have been relatively few complaints about Goldline submitted to the FTC or to the Better Business Bureau. Do you believe that a number of complaints received by FTC or the Better Business Bureau accurately reflect the number of consumers who purchase coins or precious metals for investments who are misled or feel as though they were misled?

Ms. GREISMAN. No, sir, I do not. I mean, as Mr. Bell pointed out, the percentage of consumers who complain, and we know this from consumer research that we have done, is a small percentage relative to those who may have suffered injury.

Mr. RUSH. Do consumers who overpay for such investments sometimes not learn that they have overpaid until they try sometimes years later to sell their investments?

Ms. GREISMAN. We have seen that.

Mr. RUSH. And even though, there are some who might not realize that they have overpaid. Is that correct?

Ms. GREISMAN. That is correct, sir. There are lots of reasons consumers may or may not choose to complain.

Mr. RUSH. Can you think of any other reason that investors in coins or precious metals might not complain to the FTC or the Better Business Bureau?

Ms. GREISMAN. There can be any number of reasons, Chairman. I mean, certainly consumers tend to complain most immediately to the company from which they purchased whatever good or service it was, and whether or not they seek out the Better Business Bureau or the Federal Trade Commission or a State attorney general's office depends on many factors.

Mr. RUSH. Mr. Carter, when a customer complains directly to Goldline alleging that the company made a misrepresentation about the products it sold, what are your steps that you take to resolve the matter? What are your guidelines?

Mr. CARTER. Mr. Chairman, we take every complaint seriously, as it was stated. Forty percent of our business is reorders so it is very important for us to have a quality customer service process. The initial step we take is to assign the client that has a complaint to a special manager, a liaison whose sole role is to take care of the client and resolve the issue. We review the account. We ensure that our processes with regard to disclosures and account agreements being signed and information has been taken care of and all applicable processes have been done correctly by the company. In addition to that, we many times are working with the client to come to a solution that is amenable to them so that we can resolve the issue and we do that with great care, and I am proud to say that most of our complaints are resolved and most of our issues with regard to customers are handled effectively by the company.

Mr. RUSH. And the 40 percent that you mentioned, is that 40 percent of the total value or 40 percent of the customers?

Mr. CARTER. No. What I am saying is that our transactions, when you look at our number of repeat transactions in our customers, 40 percent of our current customers represent reorder sales. So not only have they bought the first time as an initial sale but they actually reorder with the company. So it is very important for us to ensure that they are happy, that they understand their product, because they will buy multiple times over multiple years.

Mr. RUSH. My time is about up, but I have one final question. Do any of Goldline's sales staff hold or have they ever held, to your knowledge, a license to offer investment advice?

Mr. CARTER. Congressman, our sales staff are not investment advisors. They may or may not have licenses in the past. We are not aware of that. It is not a requirement for the role that they play. They are not providing financial advice. And in our disclosures, we encourage the customer to seek out their financial advisor to get that information.

Mr. RUSH. My time is concluded. The Chair recognizes now Mr. Whitfield for 5 minutes.

Mr. WHITFIELD. Thank you.

Ms. Greisman, how many consumer complaints were filed with the FTC against Goldline last year?

Ms. GREISMAN. I don't have the precise number. It is not a large number, and as the chairman indicated, in total since 2005 the FTC has received roughly 850 complaints regarding precious metals and gold coins.

Mr. WHITFIELD. And do you know out of that how many relate to Goldline?

Ms. GREISMAN. I don't know the precise number.

Mr. WHITFIELD. How many complaints were filed with the FTC totally last year?

Ms. GREISMAN. As indicated in the testimony, the short answer is well over a million, I think 1.3 million. The percentage of complaints in this precise area is less than 1 percent of the total number of complaints received.

Mr. WHITFIELD. Okay. Now, with the authority that the FTC has today under the telemarketing sales rule or some other rule, have you all issued any judgment against Goldline or any enforcement mechanism or any other action against them?

Ms. GREISMAN. Congressman, I am not at liberty to disclose whether or not the FTC is or is not investigating any particular company.

Mr. WHITFIELD. Well, I am not asking if you are investigating. I am asking have you rendered any decision against them or made any enforcement action against them?

Ms. GREISMAN. The agency has not taken any action against Goldline.

Mr. WHITFIELD. Thank you. Thank you.

Mr. Bell, can you tell us how many complaints the Consumers Union has received concerning Goldline as a company?

Mr. BELL. We are not a complaint handling organization so our organization has not specifically received any to my knowledge. We do have a customer relations staff but I don't believe that we have gotten any across the transom. But we are aware that there are enforcement actions that have been brought by the district attorney in Santa Monica against Goldline and another company, Superior Gold Group, and so for us, I think we are more broadly concerned about what is happening across the entire marketplace, and for us, the 850 complaints received by the FTC about a number of companies is a relevant number.

Mr. WHITFIELD. How does the volume of complaints for this industry compare to that of, let us say, the diamond industry, fine arts or antiques industries?

Mr. BELL. You know, I couldn't give you that information. I haven't researched the other industries. I would just say based on my experience of working in consumer advocacy for 20 years, I see a number of danger signals here just in the nature of the complaints that are being filed with authorities in part because they echo concerns we have seen with many other types of sales practices over the telephone where unsophisticated customers enter into transactions that they are later disappointed in, and in this case they could be losing thousands or tens of thousands of dollars.

Mr. WHITFIELD. Dr. Beales, you state that the advertisements and disclosures that Goldline makes that you have reviewed all appear to provide the consumer with the requisite information they need to comply with the law. Is there anything you would have them change or additional disclosures that you think they should make?

Mr. BEALES. I think the disclosures in their advertising do a good job. What I think does an even better job is the Coin Facts pamphlet that, as I said in my statement, is I think one of the clearest pieces of disclosure about the risks associated with investments that I have seen.

Mr. WHITFIELD. Mr. Carter, in my opening statement I referred to a number of newspaper articles that indicate that some people think this hearing is being held because you advertise with conservative TV personalities, radio personalities like Glenn Beck and others, Huckabee, Fred Thompson and others. Do you advertise with all sorts of networks or do you just focus in on these conservative talk show hosts?

Mr. CARTER. Well, Congressman, we advertise on a broad range of networks. At the present time we advertise on 14 different TV networks including CNN, CNBC, History International. One of our largest channels for leads is the Internet. We also advertise on radio. So we are a broad-based marketer and we have broad-based advertising.

Mr. WHITFIELD. Someone earlier today referred to three of your current employees that had been either convicted or had been involved in some sort of fraudulent activity. What were they talking about?

Mr. CARTER. We were made aware of that earlier this week by the press. These individuals, what I would say is that Goldline conducts background checks in accordance with California's hiring practices law. These employees are in good standing at the company. The event that was referred to is over a decade old, was prior to Goldline, but as of right now these employees are in good standing and they comply with our compliance policies and they went through our background check at point of hire.

Mr. WHITFIELD. And other question. Ms. Greisman, has the FTC taken any formal position on this particular legislation?

Ms. GREISMAN. Yes, sir. The Commission's testimony supports the legislation.

Mr. WHITFIELD. So you have endorsed the legislation except for the reasonable resale issue and the exemption issue, those two?

Ms. GREISMAN. That is correct.

Mr. WHITFIELD. Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the gentleman from New York, Mr. Weiner, for 5 minutes.

Mr. WEINER. Thank you, Mr. Chairman.

Mr. Carter, welcome. Do you recognize this document, executive order of the President, all persons required to deliver on or before May 1, 1933, all gold coin, gold bullion and gold certificates? Do you recognize this?

Mr. CARTER. Yes.

Mr. WEINER. Is this included in your packet of information that you send to your customers?

Mr. CARTER. Yes, it is.

Mr. WEINER. Can you tell us why?

Mr. CARTER. Because customers when determining what products they want to buy consider many features and benefits, and one of those features and benefits that they consider is the prospect of confiscation, and this was an order, as we all know, that was completed in 1933, and in the marketplace today, these are uncertain economic times. The prospect of discussions in the marketplace of the gold standard are——

Mr. WEINER. If I can interrupt, so there is a fear that this may happen again?

Mr. CARTER. There is one component that in uncertain economic times——

Mr. WEINER. There is a fear that this might get—you might have this type of thing happen again?

Mr. CARTER. Yes.

Mr. WEINER. Now, can I ask you, do you include anywhere in the material that this was overturned the following year?

Mr. CARTER. Congressman, I don't know.

Mr. WEINER. The answer is, you don't. Do you include anywhere in the material that the reason that that seizure took place had to do with the fact that then our currency was backed by dollars and it was an effort to stabilize our currency?

Mr. CARTER. Yes, I understand that.

Mr. WEINER. No, no, I'm saying do you let your—you have already said that you agree that this is because some of your customers have a fear and that you reflect that fear in this document but in a way that I think you will agree is incomplete because it doesn't say it was repealed, it doesn't put it in any kind of context. But let me ask you this. You then use this document in the pitching that your staff makes and you freely stipulate in your documents here that your sales people get a higher commission rate for selling numismatic coins than they do for bullion. Is that right? You freely say that in this document. Do you somehow make this argument because you believe in your heart—and I know that you are the host of a show called "The American Advisor"—do you believe there is any chance today that gold bullion would be seized by the government? Do you think it is a reasonable fear?

Mr. CARTER. Yes, I do, Congressman.

Mr. WEINER. Okay. Do you believe then, why would it not be a reasonable fear that they seize coins?

Mr. CARTER. Well, the executive order as it was——

Mr. WEINER. So this is 1934. I am talking about 2010.

Mr. CARTER. In 2010, Congressman, our commission salespeople and our training is that if the executive order were reenacted as it was in 1933, that coins with collector value were excluded from confiscation because their value——

Mr. WEINER. I understand. Just to summarize, Mr. Carter, you take something that was in 1933 that was repealed in 1934 and then you extrapolate what would happen, fear, the fear that it could happen in 2010. You use language in your testimony and in Coin Facts, language like duration of investment, that you should diversify your portfolio. You took explanations about the collector value of coins. You even say and I think in your testimony recommend—I know you said it publicly—recommend that people hold on to their things for 5 to 10 years. It sounds an awful lot like you are giving financial advice. Do you believe that you are?

Mr. CARTER. No, we don't. In fact, we instruct the clients that we are not financial advisors, that we point them to our disclosures and ask them to seek out financial advice.

Mr. WEINER. But Mr. Carter, when you say you recommend that someone holds on to an investment for a certain duration time, how is that not investment advice?

Mr. CARTER. It is disclosure advice, Congressman. It is to say that you should be prudent in the decisions you are making, that this should be a diversification strategy, that if you are buying a physical asset, something that you are buying today, and if your plan is to sell it tomorrow——

Mr. WEINER. I understand, but Dr. Beales——

Mr. CARTER. But my point, Congressman, the reason why when you buy a physical asset, whether you are buying a piece of property or anything, there are expenses and fees.

Mr. WEINER. I understand, but Mr. Carter, let me interrupt because I have a limited amount of time. But Mr. Beales asked a question. He is a former consultant to your company, isn't he?

Mr. CARTER. Yes.

Mr. WEINER. Mr. Beales asked the question, why is it different than any other commodity. You shop around for the best picture. You shop around for the best piece of furniture. The marketplace will decide. Here is the difference. Those things are not sold to people as investments. As in the language that you used the other day on Fox Business News, you referred to the government debt, the large deficits, inflation, the fear of confiscation. You referred to this again. It is quite a different thing than purchasing a television or piece of furniture. These are the investments of middle-class Americans like that witness that you saw sitting in that very same seat. That is why you have additional protections for these type of people. These are people that when you say in fleeting reference that you have a float, a spread of 35 percent, that means that a citizen would have to make a 54 percent markup in order to get back to zero.

And let me give you an example from today. Anyone in this room, anyone watching at home can look this up. This isn't me. It is not Mr. Carter saying it. One of Goldline's popular products is the one-quarter ounce proof American eagle. They sell it today for $685, Mr. Chairman. You can get it from the Mint for $403, available to the public with a bulk discount of more than 100 coins. Another competitor, Apmex, sells it for $425. You can get it on eBay today for $445 because it is true, Mr. Carter, that there is not a lot of scarcity to a lot of these products. So this is a 38 percent spread, a 61 percent markup over your competitor, which means the moment that the gold arrives, someone has to make up 35 percent of the market.

Let me explain what that means to Mr. Scalise. That would mean that gold would have to go from $1,293 today to $2,081 for that person to break even. When you are selling something as an investment, as a hedge against inflation, as a way to protect yourself from the future, what you are doing is like you did to that gentleman who came right before you. You are buying them into the whole the minute they walk home. It simply is inexcusable. That is why Mr. Beales is incorrect to say that, oh, this is like any other consumer product. No, for middle-class Americans, those struggling to make it who call up that number, who order these products, it is their savings, and as you know, you didn't limit it to a small percentage of that previous witness's savings; it was almost his entire savings. And that is why this legislation is needed.

Thank you, Mr. Chairman. I ask for a second round if one is available.

Mr. RUSH. The Chair recognizes Mr. Scalise for 5 minutes.

Mr. SCALISE. Thank you, Mr. Chairman.

Ms. Greisman, you had testified earlier that the definition in the legislation before us of reasonable resale value could mislead consumers. Can you be more specific on that?

Ms. GREISMAN. Yes, of course. Our concern is that it might encourage unscrupulous marketers to collude and set prices, but we would be more than happy to work with staff and we have had discussions to find a different way to state the same goal.

Mr. SCALISE. Thank you. So the bill as it is currently written could actually lead to collusion, which would actually be very detrimental to consumers as opposed to what we have now.

Mr. Carter, how many competitors do you have in the marketplace? What is a rough estimate of people that sell gold?

Mr. CARTER. It is estimated that there are 5,000 competitors in our marketplace.

Mr. SCALISE. Five thousand competitors? Okay. Obviously if you had the ability to have collusion by having language like in the bill presented before us, according to the FTC, then that number may shrink dramatically and consumers would be much more limited and possibly would be exposed to really bad deals.

Let us equate, when we talk about savings and investments, let us say someone is buying stocks. They are not buying gold but they are purchasing a stock. Clearly you are going to have some people who are going to buy a stock and it is going to do well. You are going to have some people who buy a stock and it is going to lose money, and maybe if they hold it a little bit longer then it would gain money. How many of your customers make money? How many lose money? I guess according to people we have been listening to, everybody loses money, but if you can kind of expand on that?

Mr. CARTER. It is important that the whole period is maintained by a client. That is why we disclose it. I will give an example, Congressman. Our most popular coin, the Swiss 20 franc, which has our highest threat, if you bought that product from us 5 years ago, you would have so far achieved a 90 percent return. If you bought that product from us 10 years ago, you have achieved a 240 percent return, both of those numbers after our fees. So that has been a very positive return on that product as compared over the last decade with any stocks. The S&P is down. The Dow is down. We all know what has happened with real estate. And yet our product and our customers have seen a reasonable, some would say a very attractive return.

Mr. SCALISE. So what you are saying is, your most popular product that you sell has actually experienced a large rate of return including if you back out the fees and the spread?

Mr. CARTER. That is correct.

Mr. SCALISE. Let me ask Dr. Beales, you know, when we really talk about what the focus of this hearing is and, you know, again, I have expressed what I think about that, but when you talk about the Moody's warning, and Moody's is a very respected rating agency, this isn't somebody on talk radio or a TV show. Moody's is a very respected rating agency. They have warned that the United States' triple A bond rating under the current spending of this Congress is in jeopardy. Are you familiar with that? Are you familiar with what Moody's has warned about the actual credit worthiness of the United States of America?

Mr. BEALES. Not in any detail, no. I am sort of generally aware that it is there but I am not familiar with its details.

Mr. SCALISE. There are a lot of very respected agencies that have written about what that threat is, and that threat is not, it is surely not anything that any gold company has laid out there. It is not from somebody on a television show running around trying to scare people. It is from a rating agency which I haven't heard anybody discredit who actually analyzes the borrowing and spending practices of the United States of America, and the fact that you have got Moody's out there warning of a possible downgrade in the United States' debt rating, that is serious business, and it is real. It is not somebody running around talking about the sky falling. It is a rating agency saying if this country doesn't stop borrowing money we don't have and if we don't stop spending money at the rapid pace that this Congress has been spending that we are going to be in real trouble. Our children and our grandchildren are in jeopardy of losing the opportunities that we have all enjoyed.

Our country has had a history of passing on a better opportunity to the next generation than the one before it. That has been the history of our country going back to George Washington, and that is in jeopardy right now, not because you are selling gold, because the people running this Congress are spending too much money. They are spending money we don't have. They are taking over car companies and banks and they are taking over health care. And in the meantime, the public out there is getting scared to death about all of this because they are saying where this is going to end, so they are going out and they are doing things like they are buying gold. You are not driving up the price of gold. It is going up on its own because people are concerned about the value of the dollar not based on a talk show host but based on real agencies like Moody's. Other countries are telling the United States of America to stop borrowing and spending money at this rapid pace because there are dire consequences to it.

So I would hope that rather than Congress sitting up and beating up on people that are selling gold, they should actually go and look at why people are buying gold and why the United States' debt rating is in jeopardy according to Moody's. We have got to control the spending. We have to actually stop borrowing money from countries like China and other places and create some jobs in this country, and if we do that, that will solve these problems. But right now instead of focusing on those problems, Congress is beating up on the people selling gold. Clearly, they are not listening.

I yield back.

Mr. RUSH. The Chair recognizes the gentleman from Maryland, Mr. Sarbanes, for 5 minutes.

Mr. SARBANES. Thank you, Mr. Chairman.

Mr. Carter, I had a question about the spread disclosure. So in the Coin Facts, I guess you describe this spread issue and talk about like it can be as high as 30 to 35 percent, right?

Mr. CARTER. Yes.

Mr. SARBANES. If in a particular case a salesperson knows that it could be more than that, does the salesperson have any responsibility to make that clear to the potential purchaser or do they just leave the customer thinking that—and most customers are going to assume that that is sort of the top, the ceiling. Do they lead them to believe that that is what the spread might be, assuming even—well, actually let me back up.

Does the salesperson affirmatively bring the spread issue to the attention of the customer beyond handing them this disclosure form? Is that part of the training or compliance or other directives that the salespeople operate under?

Mr. CARTER. There are multiple points in time when the disclosures of spread are covered, Congressman, and a point I want to make is that our maximum spread, the difference between our ask price and our bid price, is 35 percent. There is no higher spread. That is variable. So point one is that the customer in our sales process has to contact us and their first request to us is information that covers the Coin Facts that is mailed to them. That is the first point, easy font, easy to understand with an example of what the spread means. The second point, if the customer choose to purchase a product, our account agreement, which we have examples of these if anybody would like a copy of it, this account agreement covers the risk disclosures again. The customer has to sign this verifying that they understand have read the disclosures including what we were just discussing before any sale is final.

And the last point I will make, Congressman, is that we provide a 7-day full refund, no questions asked, buyer's remorse, talk to your spouse. We will give you 100 percent of your money back if you change your mind. We feel like we have the best processes for disclosures and sales process in the industry to make sure our customers are informed.

Mr. SARBANES. Let me go back to my first question then. It sounds as though it is not necessarily the case that the salesperson affirmatively describes to the customer what the spread is. They give them the materials and you have got a spread of 30 to 35 percent in there, which you claim is the most it can be, and then there are opportunities for them to sign saying they have read something, but in the sales pitch, in the discussion, the oral discussion that has had with the customer, it is not necessarily the case that they are made aware of the spread issue from what I am understanding.

The second question I had is, if the spread is going to be—well, whatever the spread is going to be in a particular case, is that information provided to the customer? I guess following on the first point, the answer to that must be no. So 30 to 35 percent is sort of the range that they can get off the paper but they are not going to know specifically what the spread is going to be in their particular case, right?

Mr. CARTER. No, sir. We cover in the sales process in the time of the sale the spread between the commission salesperson and the customer, and in addition there is a sales confirmation process that is separate from the sales process where we have a client service representative that covers the products that have been purchased, the total amount that you are paying, the fees associated with it to confirm that——

Mr. SARBANES. So if there was a hard sell going on by one of your salespeople where that information wasn't being provided, that would be noncompliant with the policies that you claim you have in place, it sounds like.

Mr. CARTER. Congressman, there are multiple places where we disclose the spread, as I said. It is not only the initial information that is mailed out to the customer where they take a period of 7 to 10 days to read, there is also a confirmation of that at the sales process.

Mr. SARBANES. All right. I have run out of time. So real quick let me just ask you this. You say 35 percent is the highest spread. We have information that it is higher, but just based on the first witness, who I think if I recall, the investment was $143,000. At the sale point, which was 6 months later, at a point when it didn't appear that the value of gold had changed much at all, at the sale point he got $80,000 back. The implication of that was that you had a loss of value. Now, you would attribute that to the numismatic markup in the spread but that is—I mean, I did the math and that is 43 percent right there. So just in that particular case, it doesn't appear that the claim that the spread is limited to 30 to

35 percent applied and that suggests there may be other situations that are similar to that.

Mr. CARTER. If I could respond, Congressman, Dr. Bazan's testimony, the spread was 35 percent on the products that he purchased, the difference between our ask and our bid price. As it has been pointed out before, that is a markup of 54 percent. So we buy the product back. What was not provided in the testimony is that when we bought the proof American gold coins back from Dr. Bazan, we paid a price of over $2,080 an ounce. So when gold was trading at $1,110, Dr. Bazan received from Goldline double what the melt value of the coin was. And the reason why that is, is because these are coins that have a scarcity and a demand and a collector value. So it is not in this case the melt value of the coin that drives the price, it is the market price. We paid twice the melt value to Dr. Bazan when he liquidated. So the difference between what he originally paid in his ask and the bid price is really our spread, and he held it much shorter despite our disclosures, he held it for a much shorter period of time and was not able to overcome that spread to earn a profit like other customers have held our other products and actually earned a profit. We don't like to see any client disappointed, certainly not Dr. Bazan either, but he went directly against the disclosures. By the way, the disclosures——

Mr. SARBANES. Oh, I understand he sold it faster than you recommend. I understand that point. But I am just talking about the markup appears, if that's equivalent to the spread, appears to be beyond what you indicated is the ceiling on that. I have run out of time. Thank you.

Mr. RUSH. The Chair recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman.

I am just trying to get my mind around the issue here, if the FTC is here, there is inherently an accusation, and Mr. Weiner has been very clear with his accusation of fraud and deceptive practices and deceptive advertising. So I kind of want to get into that aspect of whether there is a real basis for this. And so typically if you are providing accurate, truthful information to the consumer, you don't have fraud. It is when you are providing, as Mr. Weiner has said, lies, fear and lies is what he says. If you are going to use that as the basis for turning someone in or designing legislation, you should probably add in the DCCC and some of their advertising. But we won't go there today.

But I want to ask, this seems to be—I have got the book, account and storage agreement. So Mr. Carter, is this what you provide your customers like the doctor—what was his name—Bazan, Dr. Bazan? Is this what he received? Let me take a step back. You don't do outbound to him. You didn't call him and try to sell him or pitch to buy gold? He contacted you or a consumer contacts you?

Mr. CARTER. Correct.

Mr. TERRY. And then you send them the information, correct?

Mr. CARTER. Yes.

Mr. TERRY. What information do you send them?

Mr. CARTER. We send them an investor investment kit. Dr. Bazan contacted us via the Internet first. You are absolutely correct. We do not make outbound calls so he actually was searching for a product and originally contacted us by one of our Internet advertisements. The time between he initially contacted us and actually made a purchase was 60 days. In that period of time, he was mailed the disclosure——

Mr. TERRY. Again, I'm going to interrupt you because I just have a little bit of time. What did he receive then after he called and requested the information, or generically, what does every consumer receive?

Mr. CARTER. Every consumer receives the Coin Facts risk disclosures, which is a complete coverage of our pricing, diversification, risk factors. This is for him to be prepared and to seek and understand what he is considering. He receives the account and storage agreement that he can read at his leisure and must be signed before a sale is final if he chooses to purchase.

Mr. TERRY. Well, and I have just seen these documents today but when we heard testimony earlier regarding the spread, I was handed this, and within about 3 minutes found the information on page 11 and it seems to be fairly clearly, unlike some of the bills we write here, clearly set forth and pretty easy to figure out that if you are going to sell it back, you are going to take a 35 percent loss on selling it back, or however you want to phrase it. Do you agree that that is clear?

Mr. CARTER. Yes, I do. I think it is very clear in two forms, easily understandable with examples.

Mr. TERRY. And in that regard, with the bill that Mr. Weiner has proposed and the disclosure requirements, with what you provide the consumers today, do you feel that your disclosures are below what he is asking for, exceed or would already meet the requirements that were proposed in his hill?

Mr. CARTER. As it is presently written, I believe the disclosures that we require exceed what the Congressman is proposing. He is proposing different disclosures, but what we provide to the client, prospective client from a disclosure standpoint, is much more comprehensive than what the bill states, with the exception of the resale value that as I said in my testimony will be very difficult to determine with a competitor base of 5,000.

Mr. TERRY. I am out of time. Thank you.

Mr. RUSH. We will conduct a second round of questioning for 2 minutes, and we will allow each member an additional 2 minutes to question the witnesses, and the Chair recognizes himself for 2 minutes.

Mr. Carter, you were present during Dr. Bazan's testimony. Is that correct?

Mr. CARTER. Yes.

Mr. RUSH. And he presently sits right behind you now. So are you suggesting to him that he did something wrong in his transaction with Goldline?

Mr. CARTER. Mr. Chairman, I am suggesting that having known the disclosures that we gave him and him acknowledging them through his signoff, that if he were to need this money very quickly as he did, he decided that he wanted to, according to our account notes, invest in a different stock, which is 100 percent his choice, but having regarded the disclosures of hold period and diversification put him in a position where because it was such a short period of time that he would not recover the fees associated with the original purchase, and so in that regard, and when he called for liquidation, the person he spoke to informed him of that, that this is well short of our 3- to 5-year disclosure period and advised him of that but yet in his quote he had a hot stock he wanted to pursue. Perfectly fine. We all understand that. But it is directly and contrary to what we encouraged him to read and disclose and do, and as a result——

Mr. RUSH. Dr. Bazan seems to be a man of some wherewithal. I mean, he seems to be a man of sound mind and a competent individual. Are you telling me that a member of your organization advised him that if he divested of his purchase that he would lose approximately $60,000 at that moment and then in spite of that he went on and divested of his purchase?

Mr. CARTER. We didn't advise him. What we said is that this is in contrast to a 3- to 5-year hold period before he liquidated to make sure that that was a decision——

Mr. RUSH. And that he would stand to lose $60,000 if he did not accept your scenario, and you won't call it advice but——

Mr. CARTER. Yes, Mr. Chairman, the liquidation process would tell him the amount of money that he was going to receive. That is why they call the amount of money he would receive if he were to liquidate.

Mr. RUSH. So are you suggesting now, are you telling the subcommittee that Dr. Bazan is totally at fault in this situation? He is totally at fault for losing $60,000 of his own money?

Mr. CARTER. I am saying yes, I am saying Dr. Bazan did not adhere to the compliance and the disclosure requirements that we provide.

Mr. RUSH. The Chair recognizes the ranking member, Mr. Whitfield, for 2 minutes.

Mr. WHITFIELD. Well, thank you again, and once again I want to thank all the witnesses for being here and the members for joining us as we explore this issue. Rather than a question, I guess I will kind of summarize this in my mind, but the FTC as far we know never initiated any enforcement action against Goldline or tried to institute any fine or civil penalty against Goldline. I know Mr. Weiner talked about you were giving financial advice, and maybe it could be interpreted that way but when you do read the account and storage agreement, paragraph 7 says that client understands that Goldline believes coins and bullion are appropriate for 5 to 20 percent of a portfolio although certain individuals or organizations might recommend a different percentage. Client will independently determine what percentage is appropriate for him or her based upon their individual circumstances.

Now, I would agree that buying gold is not like buying a television or buying any normal consumer product but I would say that gold is similar in some ways because they are trying to determine value of land, futures, diamonds, silver, fine art, rubies, emeralds, all of those things, and it would seem to me that if this is a major problem, that maybe this legislation should include other things, not just gold, but I look forward to working with the chairman and Mr. Weiner, who introduced the legislation, and others. I know that the FTC has already said that they do have problems with the legislation because of the definition of reasonable resale value as well as some exemption issues, but I don't think you can—you have been in business 50 years? Goldline has been in business 50 years? Is that correct, Mr. Carter?

Mr. CARTER. Yes, we have.

Mr. WHITFIELD. So this is a company that has been in business for 50 years and 40 percent of its business is repeat customers, so I cannot imagine that this is widespread, but I may be wrong, but thank you all for your testimony and I look forward to working with you.

Mr. RUSH. The Chair recognizes Mr. Weiner for 2 minutes.

Mr. WEINER. Thank you very much, Mr. Chairman.

Mr. Bazan, the previous witness, he didn't lose all that money because of what he did; he lost all that money because you overcharged him. You took $140,000 investment and gave him $85,000 when he tried to turn it back to you. That is it. That is what happened. If he would have bought $140,000 and someone else gave him $120,000 back, they got a better deal there, didn't they? Of course. That is what happened here. The idea, he didn't follow our prescription to wait 5 to 10 years, well, I ask you, Mr. Chairman, what if the market went down in that time? Does that then go to 15, then 20? The whole point is what Mr. Scalise inadvertently said. He said the same thing happens in the stock market. You buy stock, it goes up, it goes down. Yes, we protect people and make sure there is transparency. We make sure that everyone understands what they are buying. One person buys a stock, another person buys the stock. It is the same thing. You charge for a product much, much more for someone else. You brag about how much the return was, and by the way, you are very good at this. You brag about how much the return was if you bought the Swiss franc. You didn't point out that that 200 percent increase corresponds to a 319 percent increase in that same period of time in the gold market. It is a bad investment.

It is not whether or not you think gold goes up and down, Mr. Scalise, and it will. But I tell you one thing for sure: if you are holding a lot of Swiss francs when the market collapses, good luck going and buying a loaf of bread with that. Good luck. Maybe your neighborhood store will take your Swiss franc. The only value it has at that point is whether or not you can sell it for more dollars than you bought it. That is the only measure. That is it. That is an investment. I know you are an investment advisor. You might want to write this down. This isn't well, it is my booklet that if you hold it 5 to 10 years maybe it will get better. No, 5 to 10 years in an up market, right? If it goes down it is going to take more than that, won't it, Mr. Carter? If gold goes down, it takes more than that, won't it?

Mr. CARTER. Certainly, like any——

Mr. WEINER. Of course, of course. So it could be 50. Then are you going to have a witness who comes here who lost his life savings, some middle-class guy, oh, it is his fault because he didn't wait 30 years. This is not whether or not consumers are idiots, it is whether or not they are being lied to and exploited by your company, and I would say this, and I would say this, Mr. Chairman, and I appreciate Mr. Whitfield's offer, is that there is some responsibility that we have not to exploit people in this moment of fear by making it worse. There is some responsibility. There is some responsibility to be honest with them. When you are dealing with their life savings, 50 years and complaints and non-disclosure agreements you make people sign, the fundamental question is this, is should you be doing this, should you be exploiting people this way, should you be taking advantage of the fear and anxiety that they have? Should you be implying to people that a confiscation order is in place that hasn't been in place since my father was born? That is just wrong. And what we should try to do, Mr. Chairman, is we should endeavor to give people the tools to do it. And I say to my good friend, yes, it is in here, we are going to rip you off. That doesn't make it right. It doesn't make it right when we know by comparing—you can go to my website and look at the comparison.

There are places that aren't doing it or aren't doing it as much, and this is in the seam, I would say by way of conclusion, Mr. Whitfield, because this I think is where we can try to find some common ground. This isn't a seam. It is kind of an investment but it is kind of a commodity. I think we do need to structure things a little bit differently. To a lot of people, to the witness, to a lot of Americans that buy your product, it is being treated as an investment. You go on the business stations to talk about it. You use words like divestment strategy. It is treating it like an investment. You don't hedge inflation by buying a TV. And for that reason, I say we need to find this way. And one thing is clear. If you look at the district attorney of Santa Monica, the FTC, the attorney general of Missouri, the Better Business Bureau, we need to get this under control, and I appreciate you shedding some light on and to all members of the panel and to you, Mr. Chairman.

Mr. RUSH. Mr. Terry is recognized for 2 minutes.

Mr. TERRY. Unanimous consent for 4 minutes to have the same amount of time as Mr. Weiner.

Mr. RUSH. Mr. Terry is recognized for 2 minutes and whatever amount of time he wants, he can have it.

Mr. TERRY. I would agree with Mr. Weiner in part and disagree. One is, it is not a good investment. It is not something I would do. As a matter of fact, when I was in college, a friend of mine thought that gold would be a great investment. We went to a shop. They wanted 20 percent on top of the sale. I said I am not going to do that. I made up my own mind. But to call what is in here a lie is wrong. I mean, it is clearly set forth in here. So the issue is in the interpretation of the consumer they get to decide whether that is a good investment or not.

So I would ask the gentlelady from the FTC, have you had a finding on the advertising from this company that they have lied to consumers? Because you get to decide that, because that would be right under your jurisdiction. Have you found that?

Ms. GREISMAN. Congressman, as I mentioned earlier, there is no FTC action against Goldline.

Mr. TERRY. All right. So is there any actions pending about whether or not they have lied?

Ms. GREISMAN. I cannot indicate whether or not the company may or may not be under investigation.

Mr. TERRY. I am switching gears on you here a little bit, but how many complaints have there been against all of the, was it 500, I am sorry, Mr. Carter, 500 or 5,000?

Mr. CARTER. Five thousand.

Mr. TERRY. Five thousand companies selling gold.

Ms. GREISMAN. Over the past 5 years, the FTC has received roughly 850 complaints involving coins and precious metal investments. It is a small number but again that is not dispositive as to whether or not there may be——

Mr. TERRY. True. I would agree with that statement. How many against Goldline?

Ms. GREISMAN. I don't recall the specific number, sir.

Mr. TERRY. Do you know how many against ITM? Have you heard of them?

Ms. GREISMAN. I do not know the answer.

Mr. TERRY. Okay. So all of the complaints totality is what again?

Ms. GREISMAN. Over the past 5 years, roughly 850.

Mr. TERRY. And out of the 850, have there been any actions against those companies for fraudulent advertising?

Ms. GREISMAN. I can't answer that question because I don't—I can't answer it directly. I can say as I said earlier the FTC has not sued any company recently involving misrepresentations in connection with precious metals or coins.

Mr. TERRY. Okay. So the issue here before this committee is whether it is a good investment or not, and I am not sure that is wise for this committee to make that decision, but I do think it is the obligation of the business to fully disclose all of the costs in here in that transaction as well as if you are going to buy it back from the consumer, and frankly, I think that information is laid out in pretty plain language.

So at that point in time I will yield back.

Mr. RUSH. The Chair now recognizes the gentleman from Maryland, Mr. Sarbanes, for 2 minutes.

Mr. SARBANES. Mr. Carter, you said that you feel that the disclosure that you all provide to the customers is pretty good disclosure, correct, in your view?

Mr. CARTER. Yes.

Mr. SARBANES. And in fact, I think you said to Congressman Weiner or somebody that the disclosure you have even goes beyond some of the requirements that are laid out in the legislation as you read it. Is that correct?

Mr. CARTER. We disclose more than is specifically identified in the legislation although the legislation does identify things that we currently don't disclose that we would challenge and have issue with.

Mr. SARBANES. Is your disclosure better or worse in your judgment than most of the other companies that are in the industry in which you operate?

Mr. CARTER. Well, as I said, there are 5,000. We believe that we have best practices in the industry and full disclosure with our eye on the prospective client. I haven't done exhaustive research on what our competitors are disclosing. I want to make sure that our disclosures are fair and that the prospective client is making——

Mr. SARBANES. You don't have any sense of whether you think you are sort of at the top of the class when it comes to the disclosure you do, or middle?

Mr. CARTER. Yes, I do, Congressman. I believe we are at the top of the class.

Mr. SARBANES. And I presume that you strive for disclosure because you feel like that is a good thing for your customer?

Mr. CARTER. Absolutely, yes.

Mr. SARBANES. So one would hope that you would feel the same way about the customers of these other companies that operate these offerings, right?

Mr. CARTER. Absolutely, Congressman, and what I said in my testimony is that we are for disclosure. That is not our issue with this bill. The issue with this bill is the definitions of what is excluded and the type of disclosure about resale value in aggregating 5,000 competitors is just not workable for any competitors including ourselves. So we absolutely support disclosure. It is just this current legislation, the type of disclosure that it is requesting is not capable and would ultimately harm the customer because of the information that is provided.

Mr. SARBANES. Well, I get the feeling that you are generally supportive of what Congressman Weiner is trying to do, and I expect there is going to be some further development on this legislation. He has put the pieces together that I think make a lot of sense, and you certainly are someone who promotes good, strong disclosure, which is what is at the heart of this bill, so I am sure he looks forward to having your support going forward, and I yield back.

Mr. RUSH. The Chair will declare to the subcommittee members and to the witnesses that the record for this hearing will remain open for 14 days so that any member of the committee might want to ask questions of the witnesses in writing and the witnesses will be asked to respond as quickly as possible promptly to the questions in writing from members of the committee. The record will remain open for an additional 14 days.

With that said, the committee now stands adjourned. I want to again thank the witnesses for your investment of your time in this particular matter. Thank you, and may you return home with Godspeed. Thank you so much. The committee stands adjourned.

[Whereupon, at 5:12 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement of the Honorable Joe Barton
Chairman, Committee on Energy & Commerce
Hearing on H.R. 6149, "Precious Coins and Bullion Disclosure Act"
September 23, 2010

Thank you, Mr. Chairman.

Today we're meeting in this Subcommittee to talk about the 'Precious Coins and Bullion Disclosure Act'. This Committee is responsible for a vast jurisdiction and wields great power – power that should only be used for legitimate consumer protection purposes. I question whether this bill is necessary and more importantly, why we are spending Subcommittee time on the topic.

As a Committee member and as a Representative to hundreds of thousands of constituents, I have not heard a chorus of complaints against precious metal brokers. I also haven't heard from the Federal regulator responsible for policing unscrupulous retailers about its lack of resources or authority to address the alleged problems with precious metal brokers. The FTC is not shy about asking for more authority when it perceives a need.

Rather than investigating any alleged complaints through the regular committee process, the Majority has found a solution before the problem has been identified. Let me be clear: if there is a legitimate consumer protection issue in our marketplace, we will stand with you in fighting to protect Americans. But I have yet to hear from anyone that this industry is riddled with fraud or that the existing regularity structure has failed.

I know the FTC is here to discuss its role in educating the public and their oversight and enforcement efforts in an industry of nearly 5,000 merchants. Goldline International will also testify here today, but to my disappointment a representative for other merchants or the industry will not. I also thank Dr. Bazan for providing testimony today, and look forward to any insight we can learn from his unfortunate experience.

As with most bills that come before the Committee, I believe Congress should do its best to let the market pick the winners and losers. Rather than attack one company or business model that may change with the tides, the Committee should create sound policy to let competition thrive. Bad actors exist in every industry and I believe the FTC has the appropriate power and authority to uncover fraud or deceit.

Similar to other legislation that has come before the Committee, I am worried that this bill may actually do more harm than good. For instance, it is unclear whether the bill covers solicitations made over the Internet or whether it only applies to telemarketing sales. I am also concerned that the collector exclusion may actually impede or limit competition in the industry.

There are surely pressing consumer protection issues in our marketplace. As our unemployment hovers around 10 percent and the American economy struggles to dig itself out of recession, it is not clear that this issue should be a priority for this Committee. Today marks the 6-month anniversary of the President's signing of the health care bill into law, yet this Committee has yet to hold a single hearing on its implementation. The American people deserve proper oversight of the implementation of the sweeping changes made by that law. This Committee must do a better job of prioritizing its oversight and consumer protection responsibilities.

That being said, I look forward to hearing our witnesses' thoughts on whether this bill will enhance consumer protection without burdening the legitimate actors in the industry, as well as any thoughts on potential unintended consequences of this legislation.

With that, Mr. Chairman, I'd like to thank all the witnesses here today. I yield back the balance of my time.

Rep. Phil Gingrey
Opening Statement for HR 6149 Hearing
Commerce, Trade, and Consumer Protection Subcommittee
September 23, 2010

Mr. Chairman, I want to thank you for today's hearing on H.R. 6149 – the Precious Coins and Bullion Disclosure Act. I believe that it is important that we ensure the investments of hardworking families across the country from gold coin industry, but I know that the Federal Trade Commission already has the ability to address unfair or deceptive acts and practices.

However, today's hearing is a sidebar to the problems facing the American people. I am reminded today – on the 6 month anniversary of ObamaCare – that we need to focus on putting people back to work.

Mr. Chairman, instead of working to address an unemployment rate that now exceeds 10.1% in my home State of Georgia, this Congress – and this Committee – spent 18 months trying to convince the American people that insurance companies were to blame for the high cost of health care and told the American people that ObamaCare was the answer to the problem. Unfortunately, 6 months later, prices have actually gone up by 20% with only the government takeover of health care to blame.

Mr. Chairman, during the 6 months since the enactment of ObamaCare, this Committee has yet to hold any hearings to review the impact that this law will have on the American people despite the repeated requests by Committee Republicans. If one of the planks of this subcommittee is commerce, then I urge you to call a hearing on the impact ObamaCare will have on commerce in this country.

Mr. Chairman, moving forward, I would hope that we would use what little time we have left in this Congress to examine ways to get people back to work. Similarly, on the 6 month anniversary of ObamaCare, I hope that we will see how this law is already negatively impacting our health care system and our economy as a whole.

I yield back.

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

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energycommerce.house.gov

July 20, 2010

Mark Albarian
Chief Executive Officer
Goldline International, Inc.
1601 Cloverfield Boulevard
100 South Tower
Santa Monica, CA 90404

Dear Mr. Albarian:

We are writing to request information about the practices of Goldline International, Inc. The allegations of fraud and deception against Goldline International by the company's own customers raise important questions.

On July 19, 2010, ABC News reported that the Santa Monica City Attorney's office and the Los Angeles District Attorney's office have launched a joint investigation into Goldline International, Inc.[1] The investigation is focused on complaints from consumers who allege that they were misled when entering into purchases of gold coins as well as complaints that consumers have received a different product from what they ordered from Goldline.

The Federal Trade Commission has received 17 consumer complaints between 2006 and May 2010 regarding Goldline International. These complaints include allegations of aggressive sales tactics, misleading and deceptive advertising, and overpriced products. In several of the complaints, consumers wishing to invest in gold bullion alleged that sales representatives from Goldline pressured them into buying Swiss Franc coins. These consumers later found out that the prices of these coins had been heavily marked up by Goldline and that they, and other

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[1] Exclusive: Glenn Beck's Golden Advertiser Under Investigation, *ABC News* (July 20, 2010) (online at: abcnews.go.com/Blotter/glenn-beck-fox-hosts-golden-advertiser-goldline-investigation/story?id=11197000).

collectable coins marketed by Goldline International, were not good investments.[2] The amount of money involved in these complaints against Goldline ranges from several hundred dollars to over $200,000.[3]

Goldline International representatives argue that the high mark-up for the coins is reasonable because the government could confiscate gold bullion, an argument that appears to misstate history.[4] Consumers who agree to this sales pitch are often getting much less gold than they have been led to believe. Some of these coins are made up of only 90% gold and are worth less than actual gold. As one consumer told a reporter, "people think they're investing in gold, but you're not. You're investing in coins."[5] And because these coins are not commodities like gold bullion, their value is much more subjective than gold, enabling Goldline International to set its own prices.[6] An investigation by Representative Weiner's office found that Goldline International grossly overcharges for its coins in comparison to its competitors. The prices of Goldline's coins ranged from 47% to as much as 102% more than the prices of its closest competitors.[7]

Others have complained that Goldline International acted as an investment advisor without registering as an investment advisor with state and federal authorities. In October 2006, Goldline International entered into a consent agreement with the Securities Division of the Missouri Secretary of State. Under this agreement, Goldline International paid $232,000 to a consumer for having illegally acted as an investment advisor. In the transaction, Goldline's agent told the consumer that purchasing Goldline's coins would be a better investment than the consumer's current investments, and advised the consumer to sell her annuity to pay for the purchase of more coins.[8]

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[2] Federal Trade Commission, *Consumer Sentinel Record Complaints, Reference #24635087*; Federal Trade Commission, *Consumer Sentinel Record Complaints, Reference #25435398*; Federal Trade Commission, *Consumer Sentinel Record Complaints, Reference #12503067*, (Online at: http://motherjones.com/files/MotherJonesGoldlineFTCComplaints.pdf).

[3] *Id.*

[4] For Glenn Beck's Gold Plated Sponsor, Fresh Scrutiny, *ABCNews* (July 20, 2010).

[5] Glenn Beck's Golden Fleece, *Mother Jones* (May 19, 2010).

[6] *Id.*

[7] Congressman Anthony Weiner, *As Seen On TV: An Investigation of Goldline International*, (May 17, 2010) (Online at: weiner.house.gov/Reports/GoldlineReport.pdf).

[8] Missouri Secretary of State, Consent Order, Case No. AP-06-24 (Online at: www.sos.mo.gov/securities/orders/ap-06-24.asp).

Mr. Mark Albarian
July 20, 2010
Page 3

The Subcommittee on Commerce, Trade and Consumer Protection intends to hold a hearing in the near future on the business practices of Goldline International. To help inform the Subcommittee in advance of the hearing, we request that you provide answers to the following questions no later than August 13, 2010.

1. Does Goldline International instruct or encourage its sales staff to promote sales of coins instead of bullion or offer them incentives to promote the sales of coins over bullion? If so, is this practice taught or encouraged by management in staff trainings or in sales meetings?

2. Do Goldline International sales staff receive a different commission rate percentage when selling bullion than they do when they sell collectable coins? If so, what is the difference in the commission rate between bullion sales and collectable coin sales?

3. What is the average spread between your sales prices on gold bullion, your purchase price for that same item and the melt value? What is the average spread between your sales prices on gold coins, your purchase price for that same item and the melt value?

5. Do Goldline International sales staff reference government confiscation of gold as a rationale for purchasing coins rather than bullion? If so, is this practice taught or encouraged by management in staff trainings or in sales meetings?

6. Does Goldline International offer investment advice to customers or potential customers? Is Goldline's sales staff qualified or licensed by any jurisdiction to offer investment advice?

Thank you for your assistance and cooperation in this matter. We ask that you provide a full and complete response no later than August 13, 2010. Should you have any questions regarding this request, please have your staff contact Felipe Mendoza at 202-226-2424 or Yuri Beckelman at 202-225-6616.

Sincerely,

Bobby L. Rush
Chairman
Subcommittee on Commerce, Trade and Consumer Protection

Anthony Weiner
Member
Subcommittee on Commerce, Trade and Consumer Protection

Goldline INTERNATIONAL, INC.

August 12, 2010

Via FedEx and Hand Delivery

The Honorable Bobby L. Rush
Chairman, Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Goldline thanks you for the opportunity to provide the Subcommittee with information about our company and its commitment to exemplary business practices. At the outset, a brief review of Goldline's history and commitment to consumer information and disclosure may be helpful to the Subcommittee.

Goldline History

Goldline International is one of the leading companies in the United States offering a full range of precious metals products. Since 1960, Goldline has delivered internationally recognized gold, silver, and platinum coins and bars, as well as rare and collectible numismatic coins, to collectors and investors. Goldline is proud of its A+ rating by the Better Business Bureau.

Goldline began with its founding as Deak Investor Services, Inc. in 1960. In 1998, Goldline acquired Dreyfus Precious Metals, Inc., the precious metal brokerage and storage subsidiary of the Dreyfus Corporation. In 2009, Goldline was recognized by the *Los Angeles Business Journal* as the eighth fastest growing private company and the 32d largest privately held company in the Los Angeles area. We believe we would not have achieved this significant growth without our repeat business and excellent relations with our clients.

Goldline's Commitment to Consumer Education, Disclosure and Compliance

Goldline is committed to providing the important information that clients need when making purchasing decisions. Thus, Goldline offers among the most comprehensive and clear written disclosures in the precious metals industry. These disclosures include detailed information regarding Goldline's sales staff, the risks of investing in precious metals, and Goldline's pricing policies.

Goldline's disclosures begin with its corporate brochure which states:

> Goldline provides each client with a risk disclosure booklet, *Coin Facts for Investors and Collectors to Consider*, which is located in the attached pocket. This risk

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Telephone 800-827-4653 Fax 310-319-0265 www.goldline.com

disclosure contains important information for each client to consider before making his or her first acquisition. You can review this booklet online at www.Goldline.com. Additional copies are available by calling 1-800-827-4653.

Coin Facts is written in a large, easy to read font and contains important information regarding the acquisition of precious metals. (A copy is attached as exhibit 1.) In *Coin Facts*, Goldline explains its pricing policies in extensive detail and provides a mathematical example to ensure its clients understand how this pricing works. *Coin Facts* states:

> **OUR PRICES:** Our prices are set internally based upon our analysis of a variety of factors and are not necessarily tied to the prices quoted by any other organization. The prices charged by Goldline for coins are subject to change based on market conditions. Our total profit before operating expenses may be more or less than our spread based on various factors including, but not limited to: quantity purchasing, favorable or unfavorable purchases, and positive and negative market conditions. Goldline acts as a principal, not as a broker, and generally owns the coins and precious metals it buys and sells.
>
> There is a price differential or "spread" between our selling price (the "ask" price) and our buy-back price (the "bid" price). This is often referred to as a "transaction cost."
>
> A typical spread on our most common bullion coins (e.g. Canadian Maple Leaf or South African Krugerrand gold coins) may range from approximately 5% to 20% depending on the coin though spreads may increase based upon market conditions, availability and demand. Our spread on semi-numismatic coins, rare or numismatic coins and rare currency currently ranges from 30% to 35%. Examples of coins which have a 30% to 35% spread include European gold coins such as the Swiss 20 Franc, the PCGS certified "First Strike®" coins, coins which have been encapsulated by a grading service such as PCGS or NGC, the Morgan and Peace silver dollars in all grades, and the Walking Liberty, Franklin and Kennedy silver half-dollars in all grades. Spreads may change based upon market conditions, availability and demand.
>
> With the exception of the most common 1 oz. bullion coins, Goldline charges clients its numismatic spread, which currently ranges from 30% to 35%, on coins and currency. To earn a profit upon resale to us, your coins, currency or bullion must appreciate sufficiently to overcome this price differential.
>
> To illustrate how this spread works, consider the following example. If the spread on a coin is 35% and Goldline's ask/sell price is $500 for the coin, then Goldline's bid/buy price is $325. Your coin must appreciate more than $175 to earn a profit. If you choose to sell your coin back to Goldline, you must also pay a 1% liquidation fee (the minimum liquidation fee is $15)....[1]

[1] Goldline provides a FAQ on its website which also discusses its spread and pricing:

> 12. What is the cost of my precious metals? How do you make your money?

Goldline also provides important information about its sales staff and commission structure:

> **ACCOUNT EXECUTIVES**: The Account Executives at Goldline are generally commissioned salespersons. Their commissions are usually greatest on rare coins and semi-numismatic coins and least on bullion related products. Their work experience, knowledge, background, and training vary widely. They and/or Goldline may receive, from time to time, undisclosed compensation for recommending specific coin or currency products (including but not limited to contests, cooperative advertising, and trading profits in coins that they may own and/or sell). Goldline's employees are not licensed as investment advisors and are not authorized to recommend the purchase or sale of any product or investment other than the products specifically sold by Goldline. Check with a licensed professional with expertise in a particular market before making a decision to buy or sell any security, bond, annuity or financial instrument. Further, Account Executives are not tax advisors and may not provide any advice regarding taxability, tax rates or related issues for any product Goldline sells. You should consult with your tax advisor regarding any questions about the tax implications of buying or selling bullion, rare coins or rare currency.

Coin Facts clearly spells out the risks of investing in precious metals for the potential client.

> **RISK:** All investments involve risk - coins, currency and bullion are no exception. The precious metals, rare coin and rare currency markets are speculative, unregulated and volatile and prices for these items may rise or fall over time. Goldline does not guarantee that any client buying for investment purposes will be able to sell for a profit in the future.
>
> The value of a bullion coin (e.g., Canadian Maple Leaf or South African Krugerrand gold coins) is largely determined by the current spot or market price of bullion. This price fluctuates throughout the trading day.
>
> The value of a numismatic or rare coin is determined by multiple factors which can and do fluctuate independently from bullion prices. These factors include: the perceived scarcity of the coin, its quality, current demand, market sentiment, and economic factors.
>
> Bullion, rare coins and rare currency can go down as well as up in value. These items may not be suitable for everyone. Goldline does not determine the suitability of any specific person to purchase rare coins, bullion or rare currency. You should consult with your independent financial advisor regarding whether an investment in rare coins, bullion or rare currency is right for you. You should not acquire any products from Goldline if you are not competent or qualified to make your own financial decisions.

> Goldline has a spread or price difference between our selling price, called the "ask," and our buy-back price, called the "bid." That spread varies depending on the type of coin you acquire, with the most common bullion coins like the American Eagle or Canadian Maple Leaf having the lowest spreads and all other coins having higher spreads. Spreads on bullion coins are generally 5-20% and 30-35% for all other coins. There is also a 1% liquidation fee when you sell your coins back to Goldline. You should read our risk disclosure booklet, Coin Facts for Investors and Collectors to Consider, and our Account and Storage Agreement, which describe the various spreads and will tell you how the spread works.

> You should obtain a thorough understanding of the coin and bullion products before you acquire these products as a collector or investor.
>
> The investment value of a rare coin depends in large part on the price you pay. If you are acquiring any of Goldline's products as an investment, you should evaluate its current market value, potential for appreciation and liquidity and consult independent sources regarding these factors.
>
> Since rare coins, bullion and rare currency can decline in value, you should have adequate cash reserves and disposable income before considering acquiring a coin, currency or precious metals.
>
> We do not recommend early withdrawal from accounts or securities which may result in substantial penalties or fees. You should consult with your independent financial advisor before disposing of any security, annuity, Certificate of Deposit or other investment to acquire rare coins, currency or bullion.

Coin Facts encourages prospective clients to conduct their due diligence before they acquire any product. At the very outset, *Coin Facts* provides:

> *Conduct your due diligence before you acquire rare coins, bullion and rare currency from any firm.*

(Original emphasis.)

Goldline reiterates this admonishment in its Summary:

> **SUMMARY:** We strongly recommend that you acquire a sound understanding of precious metals, coins, and their markets <u>before</u> you make your first purchase. Be prepared to invest some time and effort into understanding the market and the grading of your coins or currency. Do not commit more than 5% to 20% of your investment funds to rare coins or precious metals. Protect your future with a diversified portfolio that meets your objectives for safety, liquidity, and growth. Be prepared to hold your coin, bullion and currency investments for a minimum of 3 to 5 years, recognizing that all markets have their ups and downs. Perform your due diligence and let reason and common sense be your guide.

(Original emphasis.)

Goldline repeats much of the information from *Coin Facts* in the Account and Storage Agreement which every client must read and sign to finalize his or her purchase. (A copy is attached as exhibit 2.) For example, the Account and Storage Agreement states:

> **Considerations for Investors**…6. Goldline employees may from time to time discuss the general direction of various financial markets. Neither Goldline nor its representatives can guarantee any market movement. Further, Goldline employees are not licensed as investment advisors and they are not making any specific recommendations concerning stocks or any other form of investment. Goldline and its Account Executives are not agents for Client, have different financial interests and

> incentives from Client and owe no fiduciary duty to Client. Account Executives are generally commissioned salespeople whose commissions are greatest on numismatic and semi-numismatic items and least on bullion related products. They may receive cash and other undisclosed compensation from Goldline for recommending specific coin or currency products. Client will check with a licensed professional with expertise in a particular market before making a decision to buy or sell.

Goldline clients have their purchases of $1,000 or more confirmed by a client service representative who reviews the products being purchased, the unit price and the total price. The client service representative also reiterates that the purchase is subject to Goldline's Account and Storage Agreement.

Every client receives a written confirmation which identifies the products purchased, unit price, and total cost of the transaction. The written confirmation also reiterates Goldline's risk disclosure information. Every order is then checked at least twice before shipping to ensure accuracy.

Goldline provides all first-time clients who purchase semi-numismatic or numismatic coins with an unconditional seven day cancellation period (or longer depending on applicable state law) that provides a full refund. This allows clients additional time to compare prices, conduct additional due diligence and consult with others about their purchase.

Goldline's Answers to the Subcommittee's Questions[2]

1. Does Goldline International instruct or encourage its sales staff to promote sales of coins instead of bullion or offer them incentives to promote the sales of coins over bullion? If so, is this practice taught or encouraged by management in staff trainings or in sales meetings?

Account Executives are trained not to disparage any product that Goldline sells or refuse to show, display, offer for sale, or sell a product. Goldline's marketing and advertising is directed towards semi-numismatic and numismatic coins although Goldline sells millions of dollars worth of bullion products every year. Goldline encourages its sales staff to sell those products it features; however, the ultimate choice of products is the client's.

Goldline's commission structure is explained in *Coin Facts for Investors and Collectors to Consider* which we discuss above. This booklet is provided to every Goldline client and the client must confirm to Goldline that he or she has read this booklet.

Coin Facts provides:

> ACCOUNT EXECUTIVES: The Account Executives at Goldline are generally commissioned salespersons. Their commissions are usually greatest on rare coins and

[2] We have followed the letter's numbering which omits question number 4.

semi-numismatic coins and least on bullion related products. Their work experience, knowledge, background, and training vary widely. They and/or Goldline may receive, from time to time, undisclosed compensation for recommending specific coin or currency products (including but not limited to contests, cooperative advertising, and trading profits in coins that they may own and/or sell).

2. Do Goldline International sales staff receive a different commission rate percentage when selling bullion than they do when they sell collectible coins? If so, what is the difference in the commission rate between bullion sales and collectable coin sales?

Goldline's sales staff is commissioned. As noted above and disclosed to every Goldline client, the commissions are usually greatest on rare coins and semi-numismatic coins and least on bullion related products. While commissions may vary, generally the commission paid for numismatic and semi-numismatic items is 5.5% and the commissions for bullion products may range from 0.25%-to 2.5%. Account Executives may receive other compensation such as bonuses in addition to their commission.

3. What is the average spread between your sales prices on gold bullion, your purchase price for that same item and the melt value? What is the average spread between your sales prices on gold coins, your purchase price for that same item and the melt value?

A typical spread on our most common bullion coins may range from approximately 5% to 20% depending on the coin though spreads may increase based upon market conditions, availability and demand. Goldline's spread on semi-numismatic coins, rare or numismatic coins and rare currency currently ranges from 30% to 35%.

Goldline sells literally hundreds of different types of coins. Thus, it is not practical to provide the melt value for each coin. More importantly, a review of melt value for any coin that carries a premium above its metal content could be misleading. For example, a coin with one ounce of gold may sell for tens of thousands of dollars due to such factors as scarcity, condition, grade and demand. Looking solely at a rare coin's melt value is akin to valuing rare art based solely upon the cost of the canvas and paint.

The purchase price for coins also varies considerably based upon a number of factors including current precious metals prices, availability, demand, quantity, source, and shipping costs. Based upon these different factors, prices for a coin often vary from day to day. Given these differences and the fact that Goldline sells thousands of coins, it is not practical to identify an average purchase price for these coins.

5. Do Goldline International sales staff reference government confiscation of gold as a rationale for purchasing coins rather than bullion? If so, is this practice taught or encouraged by management in staff trainings or in sales meetings?

The Account Executives are instructed to discuss potential government confiscation of coins and bullion only in the context of the 1933 Executive Order confiscating gold and enforcement of the ban on private gold ownership as applied by the Department of Treasury, Office of Domestic Gold and Silver Operations through 1974. Goldline also provides the full text of the 1933 Executive Order on its website at www.goldline.com. No promise or guarantee regarding confiscation can be made on any Goldline product.

6. Does Goldline International offer investment advice to customers or potential customers? Is Goldline's sales staff qualified or licensed by any jurisdiction to offer investment advice?

Goldline is not licensed as an investment advisor and its sales staff is instructed not to recommend the purchase or sale of any product or investment other than the products specifically sold by Goldline. Some sales staff members may be licensed to offer investment advice; however, Goldline prohibits the offering of such advice.

***

Goldline again wishes to thank the Subcommittee for the opportunity to provide this information.

Sincerely,
GOLDLINE INTERNATIONAL, INC.

Mark Albarian
President & CEO

NATIONAL CONSUMERS LEAGUE
1701 K Street, NW, Suite 1200 Washington, DC 20006
Main: (202) 835-3323 Fax: (202) 835-0747 www.nclnet.org

September 21, 2010

The Honorable Bobby L. Rush, Chairman
Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Re: National Consumers League support for H.R. 6149, the "Coin and Precious Metal Disclosure Act"

To the Honorable Bobby Rush,

The non-profit National Consumers League has for more than 110 years advocated for social and economic justice on behalf of consumers and workers in the United States and abroad. In May of this year, we spoke out in support of Congressman Anthony Weiner's investigation of unscrupulous dealers of gold coins and other precious metals who seek to capitalize on recessionary fears by deceiving consumers about the worth of gold and gold coins as an investment hedge. Today, we write to express our support for H.R. 6149, the "Coin and Precious Metal Disclosure Act," which would do much to give consumers an accurate picture of the risks associated with buying gold and precious coins.

Purchasing gold may be a useful way for consumers to diversify their investment portfolios. However, we are disturbed by reports of gold dealers pressuring customers to purchase collectible coins at prices inflated far beyond market value. Further, it concerns us that salespeople working for a prominent gold dealer were found by the Securities Division of the Secretary of State of Missouri to be offering financial advice to consumers without being licensed as investment advisors.

H.R. 6149 will address these concerns by requiring disclosure of relevant fees and the purchase price, melt value and resale value of coins and metal bullion. We believe that these disclosures will help consumers more effectively evaluate gold investment opportunities. We applaud Congressman Weiner for introducing this bill and convening a hearing on the matter.

We urge you to support this legislation. Should you have any questions or concerns, please do not hesitate to reach out to me at your convenience.

Sincerely,

Sally Greenberg
Executive Director

cc: The Honorable Ed Whitfield, Ranking Member
The Honorable Anthony Weiner

Professional Numismatists Guild, Inc.

3950 Concordia Lane, Fallbrook, CA 92028 · Tel. (760) 728-1300 · Fax (760) 728-8507
www.pngdealers.com · info@pngdealers.com

September 20, 2010

The Honorable Bobby Rush, Chairman
The Honorable Ed Whitfield, Ranking Member
House Subcommittee on Commerce, Trade and Consumer Protection
2125 Rayburn House Office Building
Washington D.C., 20515

Dear Chairman Rush and Ranking Member Whitfield:

The Professional Numismatics Guild (PNG) wishes to offer it views on H.R. 6149, the "Coin and Precious Metal Disclosure Act" ("Act"), and ask that this letter be made a part of the record of the September 23 legislative hearing concerning this legislation.

Founded in 1955, the PNG is a nonprofit organization composed of the world's top rare coin, paper money and precious metals experts. As numismatic professionals, our primary mission is to make the hobby safe for collectors and investors by maintaining rigid standards of excellence for our member dealers. The PNG Collectors' Bill of Rights offers unprecedented protection for numismatic investors & collectors, including a binding arbitration process.

Given the mission of the Guild, we are sympathetic to the goals embodied in H.R. 6149, namely consumer knowledge. However, we believe the propose legislation will only serve to confuse rather than illuminate the marketplace for retail bullion transactions because of the poorly constructed definitions found in the bill. Moreover, from our reading of Section 6 of the bill, it appears that covered transactions will not only be for bullion products but also numismatic purchases, which we find troublesome and unneeded.

Already, there are innumerable federal, state, and local laws that cover transactions in the numismatic and precious metals retail markets. We do not believe the addition of further regulation is warranted, and will only add further costs to be borne by the consumer.

P·N·G
Knowledge. Integrity. Responsibility.

Professional Numismatists Guild, Inc.

3950 Concordia Lane, Fallbrook, CA 92028 • Tel. (760) 728-1300 • Fax (760) 728-8507
www.pngdealers.com • info@pngdealers.com

The PNG offers press releases, printed information, and other information on its website, so consumers have information available to them to make informed decisions about precious metals and numismatic purchases. We believe an educated consumer is our best client, and our member dealers encourage consumers to undertake their own due diligence before making purchases of bullion or numismatic products.

We thank the Subcommittee for its consideration of our views, and stand ready to assist it as it further considers the matter before it.

Sincerely,

Robert Brueggerman
Executive Director

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Knowledge. Integrity. Responsibility.

AMERICAN
NUMISMATIC
ASSOCIATION

Larry Shepherd
Executive Director

lshepherd@money.org
www.money.org

September 21, 2010

The Honorable Bobby Rush, Chairman
The Honorable Ed Whitfield, Ranking Member
House Subcommittee on Commerce, Trade and Consumer Protection
2125 Rayburn House Office Building
Washington D.C., 20515

Dear Chairman Rush and Ranking Member Whitfield:

I am writing to express the views of the American Numismatic Association on H.R. 6149, the "Coin and Precious Metal Disclosure Act" ("Act"), and ask that they be included in the record of the September 23 legislative hearing concerning this legislation.

The American Numismatic Association ("ANA") is a nonprofit educational organization dedicated to educating and encouraging people to study and collect money and related items. The association was founded in 1891, and chartered by Congress in 1912. With nearly 33,000 members today, the Association serves the academic community, collectors and the general public with an interest in numismatics.

The ANA is a strong advocate of consumer awareness for collectors and investors of numismatic and precious metals objects, believing that an educated numismatic community is the best defense against fraud and abusive sale practices. To that end, we have our C.A.R.E. (Consumer Awareness Resources) program that seeks to empower collectors and investors with knowledge to protect themselves from fraud and abuse. Further, we operate the Florence Schook School of Numismatics to educate students of all ages the basics about coins, coin grading, and numismatics. We also provide a range of consumer related information on our web site including a page with tips on how to buy and sell gold and silver (see: www.money.org).

While we are sympathetic with what we understand to be the intent of H.R. 6149, protecting consumers, we are concerned with the potential further intrusion of the government into the hobby's marketplace. It is our view that already there are sufficient rules, regulations, and laws in place – in the both federal and state levels – to safeguard consumers wishing to purchase precious metals bullion, in either coin or bar form, as well as numismatics. The addition of yet further authority will only add additional cost to products offered, which the consumer will ultimately be forced to absorb.

We appreciate the Subcommittee's consideration of our views.

Sincerely,

Larry Shepherd

Larry Shepherd
Executive Director

818 North Cascade Avenue, Colorado Springs, Colorado 80903-3279
Tel: 719.632.2646 Fax: 719.634.4085

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 19, 2010

Lois Greisman
Associate Director, Marketing Practices Division
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Ms. Greisman:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on September 23, 2010, at the hearing entitled "H.R. 6149, the Coin and Precious Metal Disclosure Act."

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions.

Please provide your responses by November 2, 2010, to Earley Green, Chief Clerk, via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,

Henry A. Waxman

Henry A. Waxman
Chairman

Attachment

<u>**The Honorable Ed Whitfield**</u>

Q1. Your testimony indicates 850 complaints were filed with the FTC relating to coins and precious metals since 2005. Your testimony indicates there have been approximately 100 complaints so far this year regarding coins and precious metals companies. How many total complaints that have been filed with the Commission this year?

- **a. Would this indicate a widespread and pervasive problem?**
- **b. Where would these complaints rank in the consumer Sentinel database relative to all other complaints in terms of number of complaints?**
- **c. Where would the number of complaints rank as an issue the Commission would establish as a priority for action?**

A1. There were approximately 1 million complaints filed with the Commission between January and September 2010. During this time period, the Commission received approximately 180 complaints relating to precious metals and coins. By contrast, in calendar year 2009, the Commission received 278,078 identity theft complaints. While the complaints relating to precious metals and coins account for less than one percent of all complaints received by the Commission each year for the past five years, they reflect that the individual dollar loss to consumers in some cases is critically high. The Commission does not determine its enforcement priorities based solely on the number of complaints. Consumer complaints are one factor, of many, considered in determining whether a particular act or practice warrants enforcement or other action by the Commission.

Q2. Your testimony states the Commission has filed or been involved in over 230 cases since April 2009.

- **a. What criteria does the Commission use to decide which cases to bring?**
- **b. Have you brought any cases against Goldline or other coin or precious metal sellers in this time period? Why or why not?**

A2. As you know, the Commission has been directed by Congress to act in the interest of all consumers to prevent deceptive and unfair acts or practices, pursuant to the Federal Trade Commission Act, 15 U.S.C. §§ 41-58. An act or practice is *deceptive* if (1) it is likely to mislead consumers acting reasonably under the circumstances, and (2) it is material; that is, likely to affect a consumer's purchase decision.[1] An act or practice is unfair if it causes or is likely to

[1] *Novartis Corp.*, 127 F.T.C. 580, 679 (1999), *aff'd and enforced*, 223 F.3d 783 (D.C. Cir. 2000); *Stouffer Foods Corp.*, 118 F.T.C. 746, 798 (1994); *Kraft, Inc.*, 114 F.T.C. 40, 120 (1991), *aff'd and enforced*, 970 F.2d 311 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993); *Removatron Int'l Corp.*, 111 F.T.C. 206, 308-09 (1988), *citing, e.g., Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431,1436 (9th Cir.), *cert. denied*, 107 S. Ct. 109 (1986); *International Harvester Co.*, 104 F.T.C. 949, 1056 (1984); *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 164-65 (1984); *see generally Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Assocs., Inc.*, 103 F.T.C. at 174-83.

cause substantial injury to consumers that is not reasonably avoidable by consumers themselves and is not outweighed by countervailing benefits to consumers or to competition.[2]
In determining whether a particular act or practice satisfies these standards and warrants enforcement or other action, the Commission may consider a number of factors – including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct.

In this time period, the Commission has not filed an enforcement action against Goldline or other coin or precious metal sellers. Commission staff are, however, actively pursuing investigative leads in this industry.

Q3. You state recent complaints lodged with the FTC indicate that scam artists are luring consumers with three types of precious metal or coin scams.

a. **Is this an increase in the number or frequency of complaints or rather the type of complaint?**

b. **How many complaints has the FTC received on precious metals and coins this year?**

c. **How do the number of complaints this year compare to the same time period last year?**

A3. The Commission received approximately 180 complaints relating to precious metals and coins between January and September 2010. During the same time period last year, the Commission received approximately 130 complaints.

Q4. Section 2 (a) (3) provides the Commission authority to determine such other information that would have to be disclosed to the consumer. Can you provide examples of what additional disclosures the Commission might require that is not already required to be disclosed?

A4. If the legislation were enacted, the Commission would require such other disclosures that the rulemaking record indicates are warranted. For example, if warranted by the record, we might require disclosure of any refund or return policy.

Q5. You state that collectible coins have been the subject of consumer complaints and therefore you do not want them excluded from the disclosure regime under the exemption in Section 6 of the legislation.

a. **Do you believe a coin can qualify for the exemption because its value is not affected at all by the precious metal content? Aren't all coins' value affected at least a little by the precious metal content?**

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[2] Section 5(n) of the FTC Act, 15 U.S.C. § 45(n); *see generally Orkin Exterminating Company,* 108 F.T.C. 263, 362 (1986); *Federal Trade Commission Policy Statement on Unfairness, appended to International Harvester Co.,* 104 F.T.C. at 1070-76.

b. How many coins could qualify for the exemption?

c. Can an exemption be crafted to provide relief to the small legitimate shops while still allowing you to pursue complaints about collectible coins?

A5. As currently drafted, the proposed bill would exempt from its coverage coins whose value is not chiefly attributable to their precious metal content and whose value is not affected by an increase or decline in the value of such metals. The Commission believes that this exemption may exclude from the bill's coverage certain collectible coins that have been the subject of consumer complaints. Coins whose value is largely determined by their collectability do not always have a significant precious metal content. Moreover, the value of these coins is based on their condition, rarity, and historical value, and not on their precious metal content. The grading of historic coins can be subjective, leading to artificial distinctions in the collectible value of the coins. As past Commission enforcement actions have shown, unscrupulous sellers have taken advantage of the subjectivity inherent in the collectible market by making false grading claims or false value claims when selling purported historic coins.

The Commission does not have specific statistics on the number of coins that would qualify for the exemption but believes eliminating the exemption would serve the public interest by providing important disclosures that would combat consumer confusion. If the Committee believes an exemption is warranted, Commission staff would be happy to continue to work with Committee staff on the language of such an exemption.

Q6. Do you have any reason to believe that Goldline misrepresents the value of bullion coins, or for that matter, sells bullion coins disguised as numismatic?

A6. The rules of the Commission prevent the disclosure of the existence or contours of any nonpublic Commission investigation. However, Commission staff is carefully considering the information that Congress and consumers have provided to the Commission.

Q7. I understand the Commission supports the goals of the legislation, but it is unclear to me whether the FTC can act on its own if problems in the industry are identified. Presently, does the FTC have the authority under the Telemarketing Sales Rule to write rules to solve problems the legislation is designed to fix?

A7. If the Commission identifies practices that are unfair or deceptive in violation of Section 5 of the FTC Act, it can take enforcement action regardless of whether the proposed legislation were enacted. The Commission also may issue trade regulation rules which define specific acts or practices that are unfair or deceptive. 15 U.S.C. § 57(a)(1)(B). I note, however, that these rulemaking proceedings are complex and cumbersome, and have resulted in rulemaking proceedings lasting many years.

Regarding the Commission's rulemaking authority in the area of telemarketing, the Telemarketing Sales Rule ("TSR") does not authorize the Commission to write rules requiring disclosures as set forth in the proposed legislation. The TSR does, however, require a seller or telemarketer of any item to disclose truthfully, in a clear and conspicuous matter, the total costs to purchase, any material restrictions, and refund policies. *See generally* 16 C.F.R. § 310.3. Although the TSR exempts from coverage certain telephone calls initiated by customers in response to an advertisement or direct mail solicitation, the exemption does not apply to customer-initiated calls in response to advertisements or direct mail solicitations relating to investment opportunities. *See* 16 C.F.R. §§ 310.6(b)(5)-(6). Consequently, some of the disclosures currently required by the legislation also are required by the TSR.

Q8. According to experts, Chinese imitations pose an increasing risk to consumers in the gold, silver, and precious metals marketplace. Can you please explain the FTC's role in preventing fraud at this level; especially with increasing international sales as the price of the products continue to rise.

A8. In general, the Commission seeks to protect consumers through a combination of educational materials and enforcement actions. In the area of consumer education, the Commission recently issued three consumer education pieces concerning investment in gold and precious metals. These educational pieces include a glossary of terms that consumers need to understand in order to knowledgeably consider precious metal and coin investments, and describe various historic coin scams such as investments involving false coin grading claims, misrepresentations regarding the value of purported historic coins, and bogus buy back options. They also provide consumers with important information about additional resources that they can utilize when making such investment decisions. These educational materials are available for free in the Consumer Information Section of our website, at http://ftc.gov/bcp/consumer.shtm. In addition, the Commission's Website entitled "Money Matters" provides consumers with a one-stop resource to help them spot and avoid financial scams. The Commission also encourages consumers who suspect or are victims of fraud to report it to the Commission – either online through the FTC Complaint Assistant, at www.ftccomplaintassistant.gov – or by calling our toll-free hotline, at 1-877-FTC-HELP.

In the area of enforcement, in just two sweeps over the past year, the Commission and its federal and state partners filed 189 civil and criminal actions against fraudulent operations that fleeced consumers with promises of income or monetary savings. With respect to problems involving imitation coins, the Commission has several enforcement tools available to combat the problem, including the FTC Act, the Hobby Protection Act and Rule, and where applicable, the Telemarketing Sales Rule.

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOE BARTON, TEXAS
RANKING MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225-2927
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October 19, 2010

Scott Carter
Executive Vice President
Goldline International
1601 Cloverfield Boulevard, 100 South Tower
Santa Monica, CA 90404

Dear Mr. Carter:

Thank you for appearing before the Subcommittee on Commerce, Trade, and Consumer Protection on September 23, 2010, at the hearing entitled "H.R. 6149, the Coin and Precious Metal Disclosure Act."

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions.

Please provide your responses by November 2, 2010, to Earley Green, Chief Clerk, via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,

Henry A. Waxman
Chairman

Attachment

Goldline
INTERNATIONAL, INC.

November 1, 2010

Via FedEx and Hand Delivery

The Honorable Henry A. Waxman
The Honorable Ed Whitfield
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Waxman and Congressman Whitfield:

Goldline thanks you for the opportunity to provide these responses to your Questions for the Record regarding the hearing entitled "H.R. 6149, the Coin and Precious Metals Disclosure Act."

1. **You testified that this is a highly competitive industry and thus there are numerous resources to help consumer's comparison shop. How does a consumer know what they are buying from you before they buy it, what tools are available to the average consumer for them to do their due diligence on the potential investment, and how can the average consumer estimate the market value or market price of such products?**

During the sales process, the overwhelming majority of Goldline clients will discuss a possible purchase from Goldline over several conversations which may occur days, weeks or months apart before making a decision to buy. During these conversations, the client will learn about different types of products which are available along with the costs associated with those products. Ultimately, it is the client's choice of what product to purchase.

Goldline's extensive disclosure materials strongly encourage clients to conduct their due diligence prior to making their first purchase. The average person has a number of tools available to conduct this due diligence.

Since the precious metals industry is highly competitive, there are numerous sources available to help individuals compare prices and policies among a number of dealers both locally and throughout the United States. With many dealers offering products online, people have access to multiple vendors who aggressively compete for their business. A large number of these dealers post prices online or provide toll free numbers so customers can call for price comparisons.

In addition, there are three non-profit organizations, the American Numismatic Association, the Industry Council for Tangible Assets and the Professional Numismatists Guild, that offer information about the precious metals and rare coin industries. The two largest and most respected coin grading services, Professional Coin Grading Service (PCGS) and Numismatic Guaranty Corporation (NGC), offer free information on a number of coin-related subjects. People who want to learn more about the gold market can also turn to organizations like the World Gold Council and websites such as thebulliondesk.com and kitco.com.

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Finally, there are a number of publications which offer information on acquiring precious metals and rare coins. These include the *Standard Catalog of World Coins*, *A Guide Book of United States Coins*, and David Ganz's *Rare Coin Investing: An Affordable Way to Build Your Portfolio* (Krause 2010).

2. **Is there a conflict of interest if your sales agents are selling a product your company owns? Is this conflict of interest clear to consumers?**

Many retail industries sell products which they own rather than selling a product on consignment or acting as a broker for the product owner. We do not believe there is any inherent conflict of interest in acting as a principal versus acting as a broker. In both instances, the business has a profit incentive to sell the product. Goldline fully discloses that it acts as a principal, not as a broker, in its risk disclosure booklet, *Coin Facts for Investors and Collectors to Consider*.

3. **You testified that your company was the subject of 48 complaints to the Better Business Bureau since 2006. According to Mr. Weiner, 17 complaints were filed with the FTC since that same year. RipOffReport.com also received complaints. Both the BBB and RipOffReport claim that your company responded to consumers to satisfactorily resolve the complaints.**

   a. **Of these and any other complaints, can you describe what the bases of the complaints were?**

The complaints submitted to the BBB and the ripoffreport cover a variety of issues. They include concerns about: pricing, delivery issues, condition of the product, statement errors, order errors (type or number of coins received), statements made during the sales process, and the refund period.

   b. **Can you please describe how Goldline addressed those complaints?**

Goldline provides a concierge service which is headed by a director level employee to address all client concerns and complaints. When Goldline learns of a complaint submitted to the BBB or ripoffreport, Goldline will contact the client directly (assuming the client can be identified) to discuss the matter, review the transaction and obtain additional information. Goldline will also review the details of the transaction to confirm that its internal policies were followed. Goldline then works with the client to determine how the client's concerns can be resolved. In the overwhelming number of cases, Goldline and the client reach a mutually satisfactory resolution. Goldline's A+ rating with the Better Business Bureau reflects its commitment and success in complaint resolution.

   c. **Can you please describe how you believe the proposed bill may or may not preempt similar complaints in the future?**

The proposed legislation will have no impact to preempt complaints. To the contrary, we believe the proposed legislation may increase confusion in the market place and thus increase the number of complaints received by Goldline and other precious metals sellers. This is because the proposed legislation requires sellers to disclose the "reasonable resale value" of a product to customers even though this information may confuse or mislead a customer about the product's future value.

The proposed legislation defines "Reasonable resale value" as "a reasonable price that the coin or precious metal dealer selling the coin or other precious metal determines that other coin or precious metal dealers would pay to purchase the coin or other precious metal from the consumer on the date that such coin or other precious metal is sold to the consumer."

The precious metals market, like many other markets, is highly speculative and volatile. Prices for products may vary considerably from day to day and from year to year. Suggesting to a customer that he or she will receive the wholesale value of a precious metal product should they sell at a later date is highly misleading since, in all likelihood, the value of that product will change in the coming months and years.

As such, a customer whose product falls below the "reasonable resale value" may submit a complaint, erroneously believing that the "reasonable resale value" reflected a guaranteed minimum value for the product.

d. Does your company periodically review their procedures to mitigate future such complaints?

As part of Goldline's commitment to best practices and customer satisfaction, it regularly reviews its policies and procedures to determine if changes may mitigate complaints and improve customer service. Goldline also regularly reviews its policies and procedures to ensure continuing compliance with applicable law.

4. How do your current disclosure practices compare to those that would be required by Mr. Weiner's legislation?

The proposed legislation will require precious metals dealers to disclose the following information:

(1) Any fee that is or may be incurred by the customer if the sale of the coin or precious metal bullion were to be consummated.

(2) The purchase price, the melt value, and the reasonable resale value of the coin or precious metal bullion.

Goldline currently discloses all fees incurred by the customer if the sale is consummated as well as the purchase price of the product. Although the melt value is not expressly disclosed, the client can calculate this value by multiplying the current spot price (which Goldline posts on its website and is available from numerous print and online sources) by the total number of ounces being purchased.

Goldline discloses its spread (the difference between the selling price and the buyback price) both verbally during the sales process and in writing. Goldline also provides a mathematical example to explain how the client can easily calculate the buyback price.

Goldline discloses additional information to every client which includes:

(1) the risks associated with acquiring precious metals and rare coins including the fact that the precious metals market is volatile, unregulated and speculative;

(2) precious metals and rare coins should be considered a long-term investment;

(3) no more than 5-20% of a person's investment dollars should be invested in precious metals and rare coins, though others may recommend a different percentage;

(4) precious metals and rare coins can decrease in value so a person should have adequate cash reserves and disposable income before investing in precious metals;

(5) precious metals and rare coins do not provide dividends or income;

(6) people should consult with a financial advisor before liquidating an investment to acquire precious metals or rare coins;

(7) people should not incur substantial penalties or fees if they choose to liquidate another investment to acquire precious metals or rare coins;

(8) if acquiring precious metals or rare coins for an IRA, the client should consult with his or her tax advisor to see if such an acquisition is right for them;

(9) Goldline by law cannot guarantee to buyback any product it sells;

(10) Goldline will deliver products within 28 days of receipt of good funds unless a shorter delivery period is required by applicable state law;

(11) clients should not go into credit card debt to acquire precious metals or rare coins;

(12) clients acquiring products as an investment should evaluate its current market value, potential for appreciation and liquidity and consult independent sources regarding these factors;

(13) the investment value of a rare coin depends in large part on the price the client pays;

(14) the sales people are commissioned and their commissions are greatest on semi-numismatic and numismatic coins and less on bullion products;

(15) the sales staff are not licensed investment advisors and may not provide tax or investment advice;

(16) bullion products are more liquid than semi-numismatic coins and semi-numismatic coins are more liquid than numismatic coins;

(17) coin grading is subjective and may vary from service to service and grader to grader. A difference in one grade may significantly affect the value of the coin;

(18) different market factors may influence the value of a specific coin or currency. For example, the value of a numismatic coin may be affected by such factors as grade, scarcity and demand in the marketplace while the value of a bullion coin is closely tied to the spot market for that coin;

(19) past performance and growth projections for a specific coin or type of coin may not apply to other types of coins that Goldline may offer; and

(20) clients should not acquire any products from Goldline if they are not competent or qualified to make their own financial decisions.

***

Goldline again wishes to thank the Subcommittee for the opportunity to provide this information.

Sincerely,
GOLDLINE INTERNATIONAL, INC.

Scott Carter
Executive Vice President

November 1, 2010

Via e-mail

The Honorable Ed Whitfield
Subcommittee on Commerce, Trade, and Consumer Protection
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Congressman Whitfield:

Thank you again for the opportunity to appear before the Subcommittee on Commerce, Trade, and Consumer Protection. Please find below my responses to your questions for the record as a follow-up to the hearing "H.R. 6149, the Coin and Precious Metal Disclosure Act."

Sincerely,

J. Howard Beales III
Professor
Strategic Management and Public Policy
George Washington School of Business

Response to Questions from The Honorable Ed Whitfield from J. Howard Beales III

1. You testify that we rely upon competition to police seller markups in every other market, such as retail clothing.

    a. Does competition in the precious metals and coin industry adequately police markups for consumers?

Response

Competition, supported by the common law rules that the FTC enforces when private legal remedies are ineffective, provides the best framework for consumer protection across most industries in our economy. The precious metals and coin industry has more than enough dealers to ensure adequate competition, and there is nothing about the industry that would require sector-specific regulation or application of different antitrust laws than those we apply across other segments of the economy.

    b. Are there markets for which competition does not police markups?

Response

In some markets there may be natural monopolies, such as electricity and other public utilities that historically could not support multiple sellers. Another problem, clearly not present here, involves sellers with market power. Mark-ups by individual dealers also may be too high if sellers misrepresent the mark-up or another aspect of their products or services; such fraudulent misrepresentations have been the focus of many of the FTC's past investment fraud enforcement actions.

2. If the only thing that really matters to consumers is the final price they pay, such as for an automobile, do disclosures about individual fees or markups help the consumer or confuse the consumer?

Response

In some circumstances, such as the price of individual options for an automobile, a breakout of fees for different options may help consumers pick options or a bundle of options. In other situations providing information not relevant to the final choice can confuse consumers. For example, the FTC found the disclosure of yield spread premiums in mortgage transactions made consumers less likely to identify the low cost mortgage.[1]

[1] *See* J. Lacko and J. Pappalardo, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment*, Bureau of Economics Staff Report, Washington: Federal Trade Commission (2004).

3. Can consumers make poor financial decisions if they focus on fees rather than the total cost of an item, such as a mortgage?

Response

Yes, that is precisely what the FTC found happened in its study of the disclosure of yield spread premiums in mortgages.

4. Can consumers make poor financial decisions if they focus on fees rather than the total cost of an item, such as a mortgage?

Response

Yes, that is precisely what the FTC found happened in its study of the disclosure of yield spread premiums in mortgages.

5. If you were purchasing a car or house, would you negotiate the fees or the final total price you will be charged?

Response

Obviously, at bottom, the consumer cares about the total price paid. Negotiation about a particular fee may be one mechanism to lower the total price.

6. You state the advertisements and disclosures Goldline makes that you have reviewed all appear to provide the consumer with the requisite information they need and comply with the law. Is there anything you would have them change or additional disclosures they that would benefit the consumer?

Response

Consumers can readily access many different sources of information on precious metals and coins. Goldline's consumers appear to use multiple sources of information and to make multiple contacts with the company before making a purchase. Thus, the market appears to be well functioning. Additionally, Goldline provides potential customers with a clear, well-written disclosure document, Coin Facts for Investors and Collectors to Consider, which in my experience is a vast improvement over the disclosure documents that typically accompany other investment opportunities.

7. Regardless whether you believe there is a problem that needs to be addressed with this legislation, if this legislation were to move forward, is there any reason it should not be expanded to include other industries that sell high priced items that are sold to consumers with less price transparency – such as gemstones or diamonds?

Response

As I testified, not only is there no need for this legislation, but it runs the risk that it will confuse consumers by focusing them on a disclosure that is irrelevant and that consumers may misunderstand. With regard to the "reasonable resale value" disclosure, for a consumer who expects to sell an investment position several years later, he or she may believe that this is the price they will receive at a substantially different point in time, despite the fact that market prices change constantly in this industry. Expanding the reach of the legislation would only spread the problems to other industries.

a. How do those industries compare to the coin and precious metals industry disclosures consumers receive when they make a purchase?

Response

I have reviewed Goldline's disclosures materials and have said that Goldline provides a clear, well-written disclosure document, Coin Facts for Investors and Collectors to Consider, which in my experience is a vast improvement over the disclosure documents that typically accompany other investment opportunities. I have not conducted a systematic review of disclosures by other firms in the coin or precious metal industry, or compared them to disclosures in the gemstone or diamond industries.