



Testimony of

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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

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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 Union¹ 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.

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

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

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 markup 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

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

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.