

FEBRUARY 12, 2013

## Is That a Charitable Gift Annuity or a Security?

Some people are bound and determined to find a way to make a buck (or a million) by selling investment products they market as charitable gift annuities and taking enormous commissions from the sales. Back in 2006, charitable gift annuities were at the top of the Security and Exchange Commission's list of [Most Common Older Investor Scams](#).

But that didn't stop We The People, Inc., of the United States, a Florida-based charity exempt under Section 501(c)(3) of the Internal Revenue Code, from getting caught up in what the SEC believes is a fraudulent charitable gift annuity scam. Last week, the [SEC filed complaints](#) in federal court against We The People, William G. Reeves (a director and employee of We The People), and Richard and Susan Olive (employees of We The People and alleged promoters of the so-called charitable gift annuities).

The SEC asserts that the Olives "hijacked" the previously dormant charity and fraudulently marketed and sold investment contracts that they called charitable gift annuities.

According to the complaints, between 2008 and 2012, We The People raised \$75 million from approximately 400 donors in 30 states, almost all of whom were elderly, and paid the Olives over \$1 million in commissions and salaries.

What is interesting here is that the SEC is going after not just the individuals it claims promoted fraudulent charitable gift annuities. The SEC is *also* pursuing the charity and an individual director of the charity. The SEC wants the Olives to "disgorge all ill-gotten gains" and pay civil penalties, the charity to "disgorge all illegal gains," and the individual director to pay a civil penalty.

### *So why were these considered securities in the first place?*

Absent an exception, by law, any pooled income fund, collective trust fund, collective investment fund, or similar fund (including a gift annuity pool) is a security subject to registration with and regulation by the SEC. The [Philanthropy Protection Act of 1995](#) created an exemption for charities as long as they satisfy certain requirements, including providing a disclosure statement to donors. The Act also includes a prohibition on paying commissions or other special compensation linked to the number or value of gifts obtained. We The People's program may have failed to fit into this exception, as the SEC asserts that the disclosures were false and misleading, and that commissions were paid to various promoters.

### *What should you do?*

#### RELATED CATEGORIES

- [Charitable Gift Planning](#)
- [Public Charities](#)

#### AUTHOR



A&amp;C Alumni

#### ABOUT OUR BLOG

Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

#### EDITORS

Eric K. Gorovitz  
Principal

Of course, don't lie to or mislead your donors!

Review the practices of your charitable gift annuity program:

- › Is it in accord with applicable state laws?
- › Is it exempt from registration as a security?
- › Does the disclosure statement give donors enough information so that they can make informed decisions about whether to obtain a charitable gift annuity?