Understanding the Aging Decision Maker
Thursday, October 20
9:15 a.m. – 10:15 a.m.

Our understanding of the aging decision-maker has rapidly evolved, and has been shaped by new scientific advancements and a greater knowledge of the aging process. Panelists discuss the current and upcoming senior population, and provide practical tips for working with an aging decision-maker.

Moderator: Jeffrey M. Pasquerella
Senior Vice President and Regional Director
FINRA South Region

Panelists:
Ruth Drew
Director of Family and Information Services
Alzheimer's Association

Surya Kolluri
Managing Director, Policy/Market Planning Global Wealth and Retirement Solutions
Bank of America, Merrill Lynch

Debra Whitman
Executive Vice President and Chief Public Policy Officer
AARP
Understanding the Aging Decision Maker Panelist Bios:

Moderator:

Jeffrey M. Pasquerella is Senior Vice President and Regional Director of FINRA’s South Region and the District Office located in Boca Raton. He has been employed by FINRA since August of 1999. Prior to joining FINRA, Mr. Pasquerella served as an assistant district attorney in the Westchester County District Attorney’s Office for three years. He is a 1993 graduate of Villanova University, Villanova, Pennsylvania, and a 1996 graduate of Pace University School of Law, White Plains, New York. Mr. Pasquerella is a member of the New York and Connecticut State Bars.

Panelists:

Ruth Drew, MS, LPC, is the Director of Family and Information Services at the national office of the Alzheimer's Association in Chicago, where she leads the work of; The National Alzheimer’s Association 24-hour Helpline, offering information and counseling to people affected by Alzheimer’s disease, in collaboration with a network of 80 chapters across the country. Ms. Drew authored and directs a 5-year, $4.9 million grant from the Administration on Community Living which helps fund the Helpline; The Family Programs team which coordinates development of education programs and online resources used across the country to increase awareness, information and support to all affected; and The Green-Field Library, the largest dementia-specific specialty library in the US. Ms. Drew joined the Alzheimer’s Association in 2004 and served as Program Director at a chapter before moving to the national office in 2010. She is a licensed counselor with a master’s degree in Counseling Psychology and experience in inpatient and agency settings. She has presented at national conferences, written and directed numerous programs and grant projects, and educated thousands of family caregivers and professionals concerning caregiving for people with Alzheimer's disease and other dementias. Ms. Drew has a personal interest in the work of the Alzheimer’s Association because her late grandfather had the disease, and is honored to help other families impacted by Alzheimer’s.

Surya P. Kolluri manages Policy and Market Planning for the BAC ML Global Wealth and Retirement Solutions Business. In this capacity he oversees incubation and commercialization of programs in the areas of Social Impact Investing and Longevity. He manages external relationships in these areas including the Stanford Center on Longevity, the MIT AgeLab and the Harvard Kennedy School Social Impact Bond Lab. Mr. Kolluri has spoken at a number of public forums including the White House Conference on Aging Regional Forum in Boston, addressed the staff of the National Governors Association and spoken at Oxford University on the topic of Longevity and Social Impact Investing. Prior to this, Mr. Kolluri played a variety of roles at the organization including Head of Strategy, Business Support Executive and Channel Development Manager. He joined Bank of America in 2006 from Bain & Company. He spent 14 years as a strategy management consultant based out of New York city serving clients in the US and around the world. Throughout his career, Mr. Kolluri has worked on pro-bono projects for non-profit organizations. He currently serves on the board of the MA/NH chapter of the US Alzheimer's association. He also serves on the board of the CEO Initiative for Alzheimer's (CEOI) and the Global Coalition on Aging (GCOA). He previously served as co-chair of Rebuilding Together Boston, a volunteer organization that helps rebuild homes for Boston communities in need. Mr. Kolluri has an MBA from the Wharton Business School at the University of Pennsylvania and an MS from Drexel University, Philadelphia.

Debra Whitman, Ph.D. is AARP’s chief public policy officer. She leads policy development, analysis and research, as well as global thought leadership supporting and advancing the interests of individuals age 50-plus and their families. She oversees AARP’s Public Policy Institute, AARP Research, Office of Policy Development and Integration, Thought Leadership, and AARP International. Dr. Whitman is an authority on aging issues with extensive experience in national policymaking, domestic and international research, and the political process. An economist, she is a strategic thinker whose career has been dedicated to solving problems affecting economic and health security, and other issues related to population aging. As staff director for the U.S. Senate Special Committee on Aging, she worked across the aisle to increase retirement security, lower the cost of health care, protect vulnerable seniors, safeguard consumers, make the pharmaceutical industry more transparent, and improve our nation’s long term care system. Before that, Dr. Whitman worked for the Congressional Research Service as a specialist in the economics of aging. She provided members of Congress and their staff
with research and advice, and authored analytical reports on the economic impacts of current policies affecting older Americans, as well as the distributional and intergenerational effects of legislative proposals. From 2001 to 2003, she served as a Brookings LEGIS Fellow to the U.S. Senate Committee on Health, Education, Labor and Pensions. Earlier in her career, she conducted research on savings and retirement for the Social Security Administration, helping to establish the Retirement Research Consortium and serving as the founding editor of the Perspectives section of the Social Security Bulletin. Dr. Whitman has been quoted by or appeared in numerous media outlets including The New York Times, Bloomberg, USA Today, NBC Nightly News, CBS News, The Huffington Post, The Washington Post, and Politico, among others. She serves on several boards, including the National Advisory Council on Aging for the National Institutes of Health’s National Institute on Aging, the Columbia University Mailman School of Public Health, the National Coalition on Health Care, and the Pension Rights Center. Dr. Whitman holds master’s and doctorate degrees in economics from Syracuse University and a bachelor’s degree in economics, math and Italian from Gonzaga University.
Understanding the Aging Decision Maker
Panelists

Moderator

- Jeffrey M. Pasquerella, Senior Vice President and Regional Director, FINRA South Region

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- Ruth Drew, Director of Family and Information Services, Alzheimer's Association
- Surya Kolluri, Managing Director, Policy/Market Planning Global Wealth and Retirement Solutions, Bank of America, Merrill Lynch
- Debra Whitman, Executive Vice President and Chief Public Policy Officer, AARP
The Impact of Alzheimer’s

Ruth Kolb Drew
5.4 million Americans of ALL ages will have Alzheimer’s in 2016

Of the top 10 killers, Alzheimer’s is the only one that cannot be prevented, cured or even slowed.

1 in 9 people age 65+ has Alzheimer’s

1/3 of people age 85+ have Alzheimer’s

Total cost of care for those with Alzheimer’s with more than two-thirds paid by Medicare and Medicaid

$1.1 TRILLION IN 2050

$236 BILLION IN 2016

Alzheimer’s Association Facts & Figures 2016
Alzheimer’s & Related Dementia

Dementia diseases are degenerative brain diseases with decline in memory, language, problem-solving and other cognitive skills.
Alzheimer’s disease

- Most common dementia
- Decline due to destruction of brain cells
- Eventually affects basic bodily functions, people become bed-bound and require round-the-clock care
- On average people live 4-8 years after diagnosis, but some live 20 years w/disease
- Currently no cure, no proven way to delay or slow down the disease
- Ultimately fatal
Warning Signs

- Memory loss that disrupts every day life
- Challenges in planning or solving problems
- Difficulty completing familiar tasks (home, work or leisure)
- Confusion with time or place
- Trouble understanding visual images and spatial relationships
- New problems speaking or writing words
## Warning Signs

- Misplacing things and being unable to retrace steps
- Decreased or poor judgment
- Withdrawal from work or social activities
- Changes in mood or personality including apathy or depression
- Increased anxiety, agitation and sleep disturbances

Find more information at [alz.org/10signs](http://alz.org/10signs)
Early Planning is Key

- Advancing age is the #1 risk factor for AD
- Judgment, problem-solving and executive function can be affected in the early stage
- Approximately 5% get Younger-onset Alzheimer’s in their 40’s, 50’s and early 60’s
- Early ID of trusted contacts ensures a client can name a person before cognitive decline
The Alzheimer’s Association suggests:

- Requesting trusted contacts from all clients
- Notifying trusted contacts in writing so they are not surprised to be contacted later
- Delayed disbursement for suspected financial abuse AND diminished capacity
- Consider informing external authorities such as Adult Protective Services
Contact info:

Website: alz.org

24/7 Helpline: 800.272.3900

Ruth.Drew@alz.org
1 The Problem
The Financial Impact of Exploitation

Older Americans lose at least $3 billion per year because of exploitation.
In the absence of comprehensive national data, this often-cited study was done by Utah to help discern the breadth and cost of elder financial exploitation in that state. It examined 80 cases involving individuals age 60 and older. These are average amounts exploited by the type of perpetrator.

Source: 2010 Utah Cost of Financial Exploitation Study
Retirement Savings Stolen

Average Victim
$120,000

Average Retirement Savings at 50
$108,000

1. Author’s tabulation based on METLIFE data
Reports of exploitation involving older Americans have been rising as they become a larger percentage of the population.

Sources: Census Bureau; Federal Trade Commission (fraud complaints)
1. 1950 excludes Alaska and Hawaii. 2. Figures are for complaints by consumers who reported their age.
The 50+ Are Valuable Investors

70% of financial assets

30M
The 50+ will grow by 30 million people over the next 20 years.

With the senior population set to double, deposits could increase significantly.
The Solution
1. Preventing financial exploitation.

2. Empowering financial caregivers.

3. Helping those with dementia and cognitive decline manage their money.

Consumers Want Financial Institutions that Protect Them Against Exploitation

85% prefer their financial institution’s employees to be highly trained to detect and prevent exploitation.
3 The Value
Risk Protection

When seniors are defrauded, financial institutions lose too. When financial institutions protect their older members, they also minimize their risk and exposure to loss.

Approximately **$3 billion**

Approximately **$1 billion** involving fraud of their 50+ clients
Build Trust With Investors

81% prefer to establish their accounts at a financial institution that protects them from exploitation.

41% of the 50+ say they are more likely to trust their financial institution because of how the financial institutions resolved an exploitation.
What AARP Can Do With Your Financial Institution’s Help

AARP has the expertise and ability to influence 38 million Americans. We are tackling the threat of financial exploitation head on. But we can’t do it alone. AARP’s BankSafe Initiative protects older Americans by educating financial institutions how to fight exploitation in three key areas.

Training:
AARP is creating a national online training program that will help employees in financial institutions to detect and prevent exploitation.

Blueprint to Success:
AARP will spotlight promising practices financial institutions use to protect their members from exploitation.

Partnering in Innovation:
AARP will partner with financial institutions to create innovative
Resources
AARP’s BankSafe™ Initiative: A Comprehensive Approach to Better Serving and Protecting Consumers

Introduction

BankSafe principles are key to better financial services by ensuring banks meet financial needs and safeguarding their clients. AARP’s Banking Committee has four fundamental elements: (1) Promoting Financial Exploitation, (2) Improving Financial Literacy, (3) Helping Consumers Protect Their Financial Assets, and (4) Educating the Public.

1. Promoting Financial Exploitation

Individuals aged 60 and older (60+) are looking for tools and services to better manage their financial and banking needs. This paper introduces AARP’s BankSafe initiative and discusses the value that individuals see in financial institutions. It also presents new information about the banking preferences of individuals 60+ based on a recent AARP survey and recommendations on how the banking industry and financial institutions can collaborate to better meet the needs of the older population.
Resources for Your Employees

THE RED FLAGS OF FINANCIAL EXPLOITATION AND COGNITIVE DECLINE

Social, behavioral, and physical red flags include when the client:

- Informs you they have a new, particularly close friend or “sweetheart” and/or they move away from existing relationships towards new associates.
- Is being isolated either deliberately by family or a caregiver, or as a result of life changes.
- Is being accompanied by a caregiver or family member who will not allow the client to speak without them being present.
- Appears/sounds like they are being “coached” by another individual.
- Has an overly trusting personality or a
Resources for Your Employees

AARP BANKSAFE™ INITIATIVE

DECIPHERING DEMENTIA
AT YOUR
FINANCIAL INSTITUTION

Three out of four people with dementia have difficulty using banks. x2

The worldwide prevalence of dementia is expected to double by 2050.

Although banking is an everyday task most of us take for granted, accessing financial services challenges people with dementia. They may begin to have difficulty remembering or understanding their financial decisions.

By recognizing signs of dementia, banks can provide better customer service to their customers.

Know the Signs of Dementia, BUT DO NOT ASSESS CAPACITY

One of the first signs of dementia is the inability to manage one's finances. Front-line employees and families are often the first people to spot the initial signs of dementia.

Other potential signs of dementia include the following:

- Taking longer than usual to fill out a form, organize cash, or answer a question
- Forgetting to pay a bill or paying the same bill more than once
- Difficulty completing complicated tasks that require memory, reasoning, and risk assessment
- Repeating questions and increased confusion, stress, or fear

How Front-line Employees can Protect Customers

- Be genuine, be patient, and speak calmly and in short sentences. If a customer seems confused or is repeating questions, the proper response should be reassurance and validation.
Caregiving Resources for Consumers

MANAGING SOMEONE ELSE’S MONEY

Help for agents under a durable power of attorney in Florida
Call Center for Consumers

Fraud Fighters

877-908-3360
Thank you!

www.aarp.org/BankSafe
@policydeb
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Resources

SEC Resources

• National Senior Investor Initiative

FINRA Resources

• Report on the FINRA Securities Helpline for Seniors™ (December 2015)

• FINRA Regulatory Notice 15-37, Financial Exploitation of Seniors and Other Vulnerable Adults (October 2015)
NATIONAL SENIOR INVESTOR INITIATIVE

A Coordinated Series of Examinations

The SEC’s Office of Compliance Inspections and Examinations and FINRA
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Executive Summary

One of the primary missions of the Securities and Exchange Commission (“SEC”) and the Financial Industry Regulatory Authority (“FINRA”) is the protection of investors, of which senior investors are an important and growing subset. As part of a collaborative effort, staff of the SEC’s Office of Compliance Inspections and Examinations (“OCIE”)\(^1\) and FINRA (collectively, the “staff”) conducted 44 examinations of broker-dealers in 2013 that focused on how firms conduct business with senior investors as they prepare for and enter into retirement. These examinations focused on investors aged 65 years old or older; this report refers to these investors as “senior investors.”

This report highlights recent industry trends that have impacted the investment landscape and prior regulatory initiatives that have concentrated on senior investors and industry practices related to senior investors. Additionally, the report discusses key observations and practices identified during the recent series of examinations. These examinations focused on a broad range of topics, including the types of securities being sold to senior investors, training of firm representatives with regard to senior specific issues and how firms address issues relating to aging (e.g., diminished capacity and elder financial abuse or exploitation), use of senior designations, firms’ marketing and communications to senior investors, types of customer account information required to open accounts for senior investors, suitability of securities sold to senior investors, disclosures provided to senior investors, complaints filed by senior investors and the ways firms tracked those complaints, and supervision of registered representatives as they interact with senior investors. OCIE and FINRA staff are providing this information to broker-dealers to facilitate a thoughtful analysis with regard to their existing policies and procedures related to senior investors and senior-related topics and whether these policies and procedures need to be further developed or refined.

Questions concerning this report may be directed to:

- Kevin Goodman, National Associate Director, Office of Broker-Dealer Examinations, OCIE, SEC;
- Suzanne McGovern, Assistant Director, Office of Broker-Dealer Examinations, OCIE, SEC;
- John LaVoie, Supervisory Examiner, Office of Broker-Dealer Examinations, OCIE, SEC;
- Lisa Stepuszek, Director, Regulatory Programs, FINRA; and
- Leonard Derus, Associate Director, Regulatory Programs, FINRA.
Background on the Senior Investor Initiative

Introduction

The “Baby Boomers,” those born between 1946 and 1964, began turning 65 in 2011. According to the most recent U.S. Census Bureau data, over 41 million people living in the United States, or more than 13% of the population, were 65 or older in 2011. Moreover, the number of seniors living in the United States will increase dramatically in the future. For example, the number of people aged 65 or older is projected to be more than 79 million in 2040, which is over twice as many as in the year 2000.

Over the past quarter century, this demographic has made dramatic economic gains. Housing has been a key driver of this wealth trend as well as strong market performance during that time period. The Dow Jones Industrial Average increased from 2,031 points on May 31, 1988 to 16,717 points on May 30, 2014, a gain of nearly 723%. As the Baby Boomers have begun to retire, they have started to draw from Social Security, savings, retirement accounts, and established home equity. Similar to previous generations, they typically purchase conservative income-producing investments as a source of reliable income streams during retirement.

From 2007 to 2010, however, the U.S. economy experienced its most substantial downturn since the Great Depression. In response, the Federal Reserve Board took extraordinary steps to help stabilize the U.S. economy and financial system, which included reducing interest rate levels. One result of this economic downturn and the subsequent dramatic fall in interest rates was the significant corresponding decrease in the rate of return on liquid deposits (savings accounts), time deposits (certificates of deposit or “CDs”), and bonds (treasury and municipal). As a result, many senior investors have seen a significant reduction in the income streams on which they traditionally have depended during retirement.

The combination of high levels of wealth and downward yield pressure on conservative income-producing investments may create an environment conducive to the recommendation of more complex, and possibly unsuitable, securities to senior investors as a means of replacing that income stream. Staff is concerned that, after a lifetime of accumulated savings, senior investors may meet the financial and risk threshold requirements to invest in more complex financial securities and that broker-dealers may be recommending unsuitable transactions to these senior investors or may not be providing proper and understandable disclosures regarding the terms and related risks of those recommended securities, particularly non-traditional investments.

Prior Regulatory Initiatives

In September 2007, OCIE and the North American Securities Administrators Association (“NASAA”) worked together with the National Association of Securities Dealers (“NASD”) and the New York Stock Exchange Member Regulation Inc. (now combined as FINRA) on a
collaborative initiative that included three components: active investor education and outreach to seniors and those nearing retirement age, targeted examinations to detect abusive sales tactics aimed at seniors, and aggressive enforcement of securities laws in cases of fraud against seniors.\(^7\)

As a follow-up to the 2007 report, OCIE, FINRA, and NASAA collectively published a report in September of 2008\(^8\) outlining practices that financial services firms can use to strengthen their policies and procedures for serving investors as they approach and enter retirement. The 2008 report describes new processes and procedures aimed at addressing common issues associated with interactions with senior investors that were implemented by some firms.

In August 2010, OCIE, FINRA, and NASAA published an addendum\(^9\) to update the 2008 report on business practices regarding senior investors. The addendum includes feedback from firms that participated in the prior review and additional practices they may have implemented. The addendum focuses on specific, concrete steps that firms were taking or practices they had implemented since the prior review to identify and respond to issues that are common in working with senior investors. The addendum also includes other practices that staff identified in various industry publications. In addition, the addendum encourages financial services firms to strengthen their policies and procedures for serving senior investors as these investors approach and enter retirement.

**Regulatory Guidance**

In November 2011, FINRA issued Regulatory Notice 11-52,\(^10\) which addresses the use of certifications and designations that imply expertise or specialty in advising senior investors (“senior designations”). Notice 11-52 outlines findings from a survey of firms that focused on the prevalence of senior designation usage, the extent to which particular senior designations were used or prohibited, and the supervisory systems in place regarding senior designations.

In September 2013, the SEC’s Office of Investor Education and Advocacy and NASAA published an Investor Bulletin entitled “Making Sense of Financial Professional Titles.”\(^11\) The purpose was to help investors better understand the titles used by financial professionals, such as by noting that the requirements for obtaining and using certain titles vary widely. The Bulletin also warns investors against relying exclusively on a title in determining the expertise of any financial professional. It also encourages investors to evaluate the qualifications of a title held by a financial professional they are considering employing; provides a web-based resource for investors to research a financial professional’s title; and stresses that neither the SEC nor state regulators grant, approve, or endorse any financial professional designations.

Also in 2013, eight government agencies issued joint guidance to financial institutions regarding reporting suspected financial exploitation of older adults.\(^12\) This guidance discusses the obligations of firms relating to privacy protections for their investors and the variety of exceptions in cases of suspected financial abuse. In addition, the guidance enumerates possible signs of financial exploitation in older adults that might trigger the filing of a suspicious activity report (“SAR”). A SAR is a document that financial institutions must file with the Financial
Crimes Enforcement Network following, among other things, a suspected incident of money laundering or fraud.\textsuperscript{13}

**OCIE/FINRA National Senior Investor Initiative**

Building on prior regulatory initiatives, OCIE’s National Examination Program staff, in coordination with FINRA, initiated a series of 44 examinations of broker-dealers focused on the types of securities senior investors were purchasing and the methods firms were using when recommending securities. In an environment where traditional savings accounts and more conservative investments were earning historically low yields, OCIE and FINRA staff assessed whether broker-dealers were recommending riskier and possibly unsuitable securities to senior investors looking for higher returns or that such senior investors may be making financial decisions without fully appreciating the risks associated with those recommendations.

In connection with the examinations, staff met with representatives from the Consumer Financial Protection Bureau; the AARP Education and Outreach Group; and state regulators from Florida, Colorado, California, Texas, and North Carolina. The purpose of these discussions was to identify risks to senior investors that the industry groups and government agencies had observed, especially in geographic areas known to have large numbers of retirees. The majority of these groups expressed serious concerns about the unsuitable recommendation of high-risk securities, particularly the sale of complex investments, to senior investors.

This initiative was designed as a coordinated effort to protect senior investors, and staff worked collaboratively to ensure that the series of examinations conducted had common goals. Staff used a risk-based approach to identify examination candidates that conducted a retail business and that varied in business model and size. Some factors considered included the types of securities sold, the number of registered individuals, the number of associated independent contractors, and the number of branch offices. Staff also reviewed and considered other factors, such as previous sales practice and supervisory deficiencies, firm and registered individuals’ disclosures, and customer complaints. Furthermore, staff received recommendations from SEC regional offices and FINRA district offices as these offices are familiar with the activities of the firms located in their geographic regions. In this initiative, staff reviewed how firms were marketing themselves to seniors; what information they were collecting from seniors relating to financial condition, risk tolerance, and investment objectives; what disclosures firms were providing to seniors; whether recommendations of securities were suitable for seniors; and how the firms were supervising their representatives when dealing with seniors. The examinations also reviewed how firms were training their representatives and supervisors on issues related to aging, such as diminished capacity and elder financial abuse.

In 2015, OCIE and FINRA examination staff will continue to review matters of importance to senior investors.\textsuperscript{14}
Securities Purchased by Senior Investors

Examination Observations

The different types of securities being purchased by senior investors in the low interest rate environment present during the review period provide insight into how these investors are attempting to meet their financial goals and evolving needs. Staff asked firms to provide a list of the top revenue-generating securities purchased by their senior investors by dollar amount. The securities consisted of mutual funds, deferred variable annuities (“variable annuities”), equities, fixed income investments, and unit investment trusts (“UITs”) / exchange-traded funds (“ETFs”). The examinations revealed that some senior investors purchased other securities such as non-traded real estate investment trusts (“REITs”), alternative investments, and structured products.

Staff observed that the following were among the top five revenue-generating securities at the examined firms based on sales to senior investors:

1. Open-end mutual funds at 77% of the firms;
2. Variable annuities at 68% of the firms;
3. Equities at 66% of the firms;
4. Fixed income investments at 25% of the firms;
5. UITs and ETFs at 20% of the firms;
6. Non-traded REITs at almost 20% of the firms;
7. Alternative investments such as options, BDCs, and leveraged inverse ETFs at approximately 15% of the firms; and
8. Structured products at 11% of the firms.

A description of the securities listed above, and potential benefits and risks related to these securities, is included in Appendix B.

Conclusion

Mutual funds, variable annuities, and equities were most often purchased by senior investors. More complex securities such as UITs, REITs, alternative investments, and structured products were also purchased by seniors, but such purchases were less frequent. Due to the wide-ranging
nature of these investment products, it is critical that senior investors are fully informed of the features of any security they are purchasing, including the potential return and associated risks.
Training

Discussion of Relevant Rules

Training is an important tool for firms to help ensure that their representatives understand the needs of senior investors. FINRA Rule 1250(b) requires all broker-dealers to provide continuing education for their representatives, and their training plans must be appropriate for all business activities associated with the firm. This rule requires training programs, at a minimum, to cover the following with respect to their securities recommendations, services, and strategies: general investment features and associated risk factors, suitability and sales practice concerns, and applicable regulatory requirements. There is no requirement that a firm’s training address issues specific to senior investors.

Examination Observations

More than 77% of the firms incorporated training specific to senior investors and senior issues in their training plans, typically on an annual basis, to educate employees on the needs of this unique investor group. The training addressed topics such as:

- Ensuring that clients, specifically seniors, were fully informed of the risks involved with each product. For example, one firm trained its representatives on its requirements to evaluate the client’s understanding of the recommended product and to confirm completeness of all mandatory acknowledgment forms and disclosures.

- How investment needs change as investors age. For example, one firm’s training emphasized that not all products were suitable for the same type of investors. Another firm instructed representatives that they must consider various factors when making recommendations to senior investors, such as current employment, primary expenses, sources of income, fixed or anticipated expenses, liquidity, and investment goals.

- Escalation steps in the event that a representative notices signs of diminished capacity or elder financial abuse. Approximately 13% of the firms specifically told their representatives to notify compliance or supervisory personnel if they suspected diminished capacity or elder financial abuse. For example, training material instructed representatives to contact compliance with a problematic or suspicious situation and to document meetings, conversations, or other exchanges with relatives and others about the situation if the representative had noticed signs of diminished capacity. One firm provided a training module focused on reporting suspected senior financial abuse. The module, among other things, encouraged the firm’s representatives to ask questions, confirm who had authorization on the account, contact the at-risk senior (separately from the suspected abuser), and escalate the matter to the appropriate supervisor. Some tips or
red flags which would trigger escalation included atypical or unexplained withdrawals, drastic shifts in investment style, and changes in beneficiaries listed in the IRA.

In addition, 64% of firms reported conducting general training classes and/or classes to educate firm representatives on sensitive matters relating to senior investors. For example, one firm provided a mandatory training class for all representatives focused on elder financial abuse and the exploitation of older adults as well as a new-hire training course on the recognition of senior financial abuse. This training described warning signs that may indicate possible elder financial abuse such as sudden changes in investment approach; changes in behavior of a senior client, which could stem from fear of a family member or guardian; problems reaching the senior in question; or a new family member or contact suddenly attempting to make transactions in the senior client’s account without proper authorization. The training also detailed the representative’s responsibilities related to those warning signs, in addition to reporting suspicious activity to management and attempting to converse with the elder investor outside the presence of the person influencing or acting on behalf of the elder investor.

**Conclusion**

FINRA Rule 1250(b) requires firms to have a training plan that is appropriate for all business activities. Senior investors represent a large percentage of the investing population, and training employees on sensitive senior matters is an important step in detecting elder financial abuse, detecting potential diminished capacity, and understanding the needs of senior investors. Staff found that most firms incorporate training specific to senior issues into their training plans.

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**Notable Practices: Training**

- Requiring a series of mandatory continuing education training courses over a 12-month period. Some of the courses cover the stages of mental capacity (full or diminished) and solutions to handling an investor’s potential diminished mental capacity (e.g., helping senior investors understand steps they will need to take to handle financial responsibilities, such as execution of a durable power of attorney; suggesting that a family member or third party attend meetings to protect the client’s interests; escalating concerns with state agencies and regulators; and documenting all interactions).

- Training supervisory staff to assist personnel in handling an investor’s potential diminished capacity and elder financial abuse concerns.
Use of Senior Designations

Discussion of Relevant Rules

Firms may allow their representatives to use senior-specific certifications and professional designations to imply expertise, certification, training, or specialty in advising senior investors.\textsuperscript{15} The SEC and FINRA, consistent with other federal agencies, state securities regulators, and self-regulatory organizations (“SROs”) do not grant, approve, or endorse any professional designation. FINRA’s rule on supervision in effect at the time of the examinations (NASD Rule 3010)\textsuperscript{16} required each firm to establish and maintain a system to supervise the activities of each registered person, including their use of designations. This rule was intended to safeguard against the use of designations by firm representatives to deceive investors or to act in an unscrupulous manner. FINRA Regulatory Notice 11-52 reminds firms of their supervisory responsibilities concerning the use of senior designations that suggest expertise, certification, training, or specialty in advising senior investors. Notice 11-52 also highlights sound practices while encouraging firms to bolster their own supervisory procedures.\textsuperscript{17}

Examination Observations

State regulators, among others, have identified the use of senior designations in marketing and communications with the public as a possible risk to investors.\textsuperscript{18} Firms and their representatives may use these designations to imply expertise or credentials that may be inaccurate or misleading. Some senior designations have requirements including training classes, testing requirements, continuing education, and recognition from an accredited institution. Other designations are less stringent, and some do not have any requirements. The meaning of what these designations entail or the experience they represent can be confusing to any investor who relies on financial professionals to assist them with their financial issues.

Almost 64% of the examined firms allowed their representatives to use senior designations in their sales efforts, and these firms collectively permitted the use of 25 different senior designations. The designations used entailed a wide range of qualifications, some of which included an approved curriculum, continuing education requirement, and recognition by an organization that is accredited by another institution. Some firms prohibited the use of senior designations that did not meet certain minimum curriculum and continuing education requirements. For example:

- 64% of the designations that firms allowed representatives to use required continuing education for the financial professional to maintain the title.

- 44% of the allowed designations were not recognized by any independent accrediting organization.
Almost 30% of the firms prohibited titles or designations if the corresponding curriculum and continuing education requirement did not meet certain specified standards.

Of the 28 firms that allowed senior designations, 14% did not track which representatives had a senior designation, which may violate FINRA’s rule on communications with the public (FINRA Rule 2210) and FINRA’s rule on supervision in effect at the time of the examinations (NASD Rule 3010). As noted above, these rules require firms to know how their representatives hold themselves out to the public.

Conclusion

Senior designations have varying requirements, some more rigorous than others. For example, certain designations carry specific qualification requirements, while others have none. As a result, some of these designations may be misleading to the investing public. It is important that all investors not rely solely on a title to determine whether a financial professional has the appropriate expertise. In addition, the use of senior designations should be properly supervised. It may be prudent for firms that allow senior designations to adopt policies to safeguard against possible misuse of those senior designations.

Notable Practices: Senior Designations

- Requiring senior designations to have a verified curriculum, a continuing education element, and accreditation from a recognized independent institution.
- Requiring supervisory approval prior to the use of senior designations.
- Prohibiting the use of senior designations.
Marketing and Communications

Discussion of Relevant Rules

FINRA Rule 2210 includes requirements for a firm’s communications with the public, including retail communications. Rule 2210(a)(5) defines retail communications to include any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(b)(1)(A) requires an appropriately registered principal to approve most retail communications before the earlier of its use or filing with FINRA’s Advertising Regulation Department. In addition, Rule 2210(c) requires broker-dealers to file certain retail communications with FINRA’s Advertising Regulation Department. For example, with certain exceptions, broker-dealers must submit all retail communications concerning registered investment companies within ten business days of first use.

Rule 2210(d)(1) addresses the content standards of firms’ communications with the public, which include the following:

- All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

- No member may make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. No member may publish, circulate, or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

- Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor’s understanding of the communication.

- Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield inherent to investments.

- Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

- Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion, or forecast.
Rule 2210(f) includes requirements for public appearances. Rule 2210(f)(1) states that the content standards in Rule 2210(d)(1) also apply to public appearances by persons associated with broker-dealers. These public appearances include sponsoring or participating in a seminar, forum, radio, or television interview or otherwise engaging in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications, or correspondence. If an associated person recommends a security during a public appearance, Rule 2210(f)(2) requires the associated person to have a reasonable basis for the recommendation and to disclose certain conflicts of interest. In addition, Rule 2210(f)(3) requires firms to establish written policies and procedures that are appropriate to their business, size, structure, and customers to supervise their associated persons’ public appearances. These procedures must provide for the education and training of associated persons who make public appearances as to the firm’s procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and followed. Rule 2210(f)(4) clarifies that scripts, slides, handouts, or other written (including electronic) materials used in connection with public appearances are considered communications for the purposes of Rule 2210, and members must comply with all applicable provisions based on the communications’ audience, content, and use (e.g., approval requirements for retail communications and content standards). Unscripted public appearances at a seminar are not subject to the principal pre-use approval requirements of Rule 2210(b)(1)(A).

Rule 17a-4(b)(4) under the Securities Exchange Act of 1934 (“Exchange Act”) requires broker-dealers to preserve all of their communications with the public which are subject to FINRA rules. The records must be preserved for a period of not less than three years, the first two years in an easily accessible place.

**Examination Observations**

Staff reviewed marketing and advertising materials used by the examined firms and observed that the firms and their representatives used diverse approaches to promote services and securities to senior investors. A very small number of firms sent retail communications to senior investors specifically because of their age. Retirement planning was a dominant theme of retail communications focused on attracting senior investors. Other senior-related themes included long-term care insurance, wealth preservation, and wealth transfer. Firms promoted these themes through various channels such as brochures, print and electronic advertisement, newspaper columns, radio and television commercials, and seminars. Retirement seminars were a popular forum for soliciting potential investors, including senior investors.

With regard to radio, at least two firms permitted their representatives to host shows to broadly market the services they provide to investors, often discussing themes that may be appealing to senior investors such as retirement. Staff identified potential rule violations such as misleading advertisements and the failure to properly supervise the content of radio shows.
With regard to seminars, approximately half of the firms permitted representatives to host educational seminars covering a wide variety of investment topics, and at least five firms prohibited representatives from hosting seminars. Many seminars appeared designed to target senior investors, as well as middle-aged investors and investors approaching retirement. For example, some seminars focused on investors who were still working but were transitioning from the accumulation of wealth stage to retirement. Others were designed to discuss possible strategies regarding long-term retirement planning techniques that consider changes to income and when to start drawing from annuities, Social Security, pensions, and other defined benefit plan income.

Of the firms that permitted seminars and other forms of public appearances, staff observed that the firms generally had written supervisory procedures specifically covering this area. The specifics of written supervisory procedures differed among firms. For example:

- Some firms required a designated supervisor to review and pre-approve all materials related to the proposed seminar.

- Some firms stated that invitations to seminars could not imply that products would be sold during the seminar. Further, these firms required supervisors, or appropriate designees, to attend seminars periodically to ensure compliance with all regulatory and firm requirements.

- At least two firms established documentation standards for seminars. For example, some of the procedures required that representatives maintain documentation on the date(s) of the seminar, the title of the seminar, the seminar content, name(s) of firm representative hosting the seminar, the date the material for the seminar was submitted for approval, and the date the supervisor approved the seminar.

- Other firms required representatives to distribute evaluation forms to attendees to solicit feedback. Supervisors were then required to review these forms to help identify any issues of regulatory concern that may violate firm policies or the content requirements of FINRA Rule 2210.

Staff observed instances at two firms where the firm or its registered persons appeared to fail to comply with provisions that were set forth in the firm’s written supervisory procedures. For example, deficiencies included the failure to obtain supervisory approval for materials used during seminars and, separately, the failure to maintain evidence of approval of seminar materials in contravention of firm written supervisory procedures that required such approval.

**Conclusion**

Retirement planning is often a dominant theme in retail communications that firms use to attract senior investors. Long-term care insurance, wealth preservation, and wealth transfer also are
common senior investor-related themes. These communications take a variety of forms including brochures, print and electronic advertisement, newspaper columns, radio and television commercials, and seminars. Firms appeared to generally comply with content standards and rules requiring firms to have written policies and procedures, although staff noted a few instances of potentially misleading advertisements and the potential failure to properly supervise the content of radio shows as well as the potential failure to comply with a firm’s written supervisory procedures for seminar materials.

**Notable Practices: Marketing and Communications**

- Having written supervisory procedures that require supervisory approval to participate in unscripted seminars and other forms of public appearances that are not subject to the principal pre-use approval requirements of FINRA Rule 2210(b)(1)(A).

- Distributing evaluation forms to seminar attendees to solicit feedback which are then reviewed by a supervisor to identify any issues of concern that may violate firm policies or the content requirements of FINRA Rule 2210(d)(1).
Account Documentation

Discussion of Relevant Rules

Both the SEC and FINRA have rules regarding the minimum information that firms must obtain and maintain for each customer account. Exchange Act Rule 17a-3(a)(17)(i)(A) requires broker-dealers to make and keep current a record for each customer account that includes the customer’s name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account’s investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record must indicate whether it has been signed by the associated person responsible for the account, if any, and approved or accepted by a principal of the member, broker or dealer. Rule 17a-3(a)(17)(i)(B) requires firms to furnish each customer with a copy of his or her account record within 30 days of opening the account and at least every 36 months thereafter. Furnishing account records is an important tool to help customers and firms promote the accuracy of investment profiles. This is of particular importance to senior investors due to changing liquidity needs and evolving objectives and risk tolerances, such as when investors move from accumulating assets to using assets to provide income during retirement. Rule 17a-3(a)(17)(i)(B) also requires firms to notify customers of name or address changes of the customer or owner and to send updated customer account records reflecting changes in the account’s investment objectives within 30 days.

FINRA Rule 4512(a)(1) requires, among other items, that a firm maintain the following information for each customer account: the customer’s name and residence; whether the customer is of legal age; names of any associated persons responsible for the account, and if multiple individuals are assigned responsibility for the account, a record indicating the scope of their responsibilities with respect to the account; and signature of the partner, officer, or manager denoting that the account had been accepted in accordance with the member’s policies and procedures.

Additionally, FINRA Rule 2090 requires firms to use reasonable diligence, in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and the authority of each person acting on behalf of such customer. FINRA has provided a “New Account Application Template” or voluntary model brokerage account form that firms may use as a resource when they design or update their new account forms.

Examination Observations

Staff reviewed the types of information firms collected when opening accounts for senior investors to assess compliance with applicable rules. Approximately 98% of the firms collected
the information for new customer account records required by the rules. At least 30% of the firms obtained more information than what is required, including detailed expense information (including short and medium-term expenses), retirement status, whether there was a durable power of attorney, mortgage-related information, insurance policy information, healthcare needs, sources of income (whether those sources are fixed or will be in the future), savings for retirement, and future prospects for employment. In addition, at least 23% of the firms adopted FINRA’s New Account Application Template or a variation. The firms that did not use the template used customized, firm-specific new account forms or multiple documents to obtain the required customer information.

Staff also assessed firms’ compliance with requirements for updating senior customer account information. Some firms used automated supervisory alerts to help ensure that updated customer investment profiles accurately reflected changes in customers’ personal and financial circumstances. Aged account records were being relied on for recommendations at 32% of the firms; at those firms, some of the account information reviewed was more than 36 months old.

**Conclusion**

Almost all of the firms appear to be consistently meeting their obligations to collect the required customer account information for senior investors when opening new accounts, and in many cases, firms were obtaining more detailed information than is required by the applicable rules; however, some did not appear to be properly updating account information or appeared to be relying on account records aged more than 36 months. It is important for customer account information to be updated so that it properly reflects customer financial needs, investment objectives, and risk tolerance, among other things.

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**Notable Practices: Account Documentation**

- Obtaining more detailed customer account information than what is required by the applicable rules. For example, firms obtained detailed expense information from customers and calculated both short and intermediate-term expenses, among others.

- Using automated supervisory alerts to help ensure that updated customer investment profiles accurately reflect changes in customers’ personal and financial circumstances.
Suitability

Discussion of Relevant Rules

Broker-dealers generally have an obligation to recommend only those specific investments or overall investment strategies that are suitable for their customers. The concept of suitability appears in specific SRO rules and has been interpreted as an obligation under the antifraud provisions of the federal securities laws. FINRA Rule 2111 requires firm representatives to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer based on the information obtained through reasonable diligence to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the representative in connection with the recommendation.

FINRA Rule 2330 includes additional requirements for recommended purchases and exchanges of variable annuities. For example, Rule 2330(b)(1)(A) provides that for a recommended purchase of a variable annuity to be suitable in accordance with Rule 2111, firm representatives must have a reasonable basis to believe that the customers have been informed, in general terms, of the various features (both restrictive and beneficial) of variable annuities; the customers would benefit from certain features of variable; and the particular variable annuity as a whole, including any underlying sub-accounts, riders, and similar product enhancements, are suitable. Rule 2330(b)(1)(B) includes similar requirements for recommending the exchange of a variable annuity, requiring firm representatives to take into consideration factors such as whether customers would incur surrender charges, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees or charges; whether customers would benefit from product enhancements and improvements; and whether customers have had another variable annuity exchange within the preceding 36 months. In addition, Rule 2330(b)(2) requires firm representatives to obtain, at a minimum, the following information before recommending the purchase or exchange of a variable annuity: customer age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and any other information a reasonable person would need in making recommendations to customers.

Examination Observations

Staff analyzed the suitability of recommendations of variable annuities, alternative investments, mutual funds, structured products, REITs, equities, and municipal bonds to senior investors based on a variety of factors, including the appropriateness of exchanges, excessive fees, concentration of liquid net worth, short investment time horizon, and age.
Staff found evidence indicating that 34% of the firms made one or more potentially unsuitable recommendations of variable annuities. One of the most prevalent factors contributing to questions about these recommendations was the appropriateness of exchanges, especially in light of fees. For example, one firm representative displayed a consistent pattern of recommending that investors exchange variable annuity contracts purchased within the previous 36 months. In one of those cases, an investor funded the purchase of a new contract by selling a contract he had purchased less than three years earlier, incurring a surrender charge, a loss of death benefit, and an increase in fees. In this case, the cost and commissions charged with the new contract along with surrender charges, increased fees, and a new surrender schedule appeared to outweigh the benefits, given the investor’s age.

Other factors that prompted staff’s further review of recommendations of variable annuities included patterns of a large percentage of investors’ liquid net worth being invested in variable annuities, investment time horizons and age not matching features of the product, firm representative not sufficiently collecting investment profile information, and investment objectives that appeared inconsistent with the terms of recommended variable annuities.

Approximately 14% of firms made potentially unsuitable recommendations to purchase alternative investments, which can be difficult to value, involve high purchase costs, have limited historical data, and often lack liquidity. For example, at one firm, representatives failed to consider the age (90) and low income of one investor, and the limited investment experience and “growth and income” investment objectives of another investor. These senior investors held the positions for less than ten days and experienced significant realized losses.

Less than 10% of firms made potentially unsuitable recommendations of other types of securities to senior investors. For example:

- 9% made potentially unsuitable recommendations of mutual funds. In one instance, staff believed that recommendations of C shares were potentially unsuitable because the customer’s investment horizon was eleven years or more, the investment objective was income, and the purchase of Class A shares in the same fund would have qualified the customer for breakpoints.

- 7% made potentially unsuitable recommendations for sales of structured notes and market-linked CDs, which often lack liquidity, carry complex risks such as default risk, and are difficult to value. It appeared that firm representatives failed to consider investors’ risk tolerances, investment concentrations, the illiquid nature of these securities, and investors’ age and time horizon when assessing suitability. For example, representatives made multiple recommendations for market-linked CDs, which exceeded maximum firm thresholds of investable assets and product concentrations. One such recommendation was made to an 87 year-old investor with a moderate risk tolerance, an investment objective of growth, and investment experience that was limited to mutual
funds. The product would not become liquid until the investor was 94 years old, and the investment tied up a significant percentage of the investor’s assets.

- 7% of firms made potentially unsuitable recommendations for exchange-traded and non-traded REITs. For example, one firm employed a REIT Trading (switching) program that may have facilitated recommendations of REITS to senior investors. The program involved a recommendation to purchase a non-traded REIT followed by a recommendation to sell the REIT once it became publicly traded followed by a recommendation to buy a new-non traded REIT. In multiple cases, the firm representatives failed to combine orders to obtain volume discount benefits for their customers. In addition, staff cited several instances where firm representatives made the recommendations without adequate suitability information including investment objectives, risk tolerances, and investment experience.

Conclusion

In a low interest rate environment, firms may be recommending non-traditional investments to supplement the income streams of senior investors. Staff found that firms made more potentially unsuitable recommendations for non-traditional securities such as variable annuities, structured products, and REITs than for more traditional securities such as open-end mutual funds, equities, and fixed income investments. Firms must have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the investor based on the information obtained through reasonable diligence into an individual’s investment profile.

<table>
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<th>Notable Practices: Suitability</th>
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<td>Adopting policies and procedures addressing suitability risks specific to senior investors.</td>
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<td>Requiring firm representatives to memorialize in firm computer systems conversations between the representatives and senior investors relating to the recommendations.</td>
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<td>Drafting product applications that require firm representatives to consider and document crucial investment profile information.</td>
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<td>Establishing strict firm product concentration guidelines for senior investors.</td>
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Disclosures

Discussion of Relevant Rules

Section 17(a)(2) of the Securities Act of 1933 ("Securities Act") makes it unlawful for any person in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. In addition, Section 5 of the Securities Act requires that firms furnish a prospectus in connection with the offer or sale of mutual funds and variable annuities. Mutual fund and variable annuity prospectuses contain details on the product’s objectives, investment strategies, risks, performance, distribution policy, fees and expenses, and fund management.

FINRA Rule 2010 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. This rule speaks to the necessity of full disclosure in relation to material information without omissions regarding broker-dealer firms and their interactions with investors. In addition, other FINRA rules include additional disclosure requirements for special products, such as variable annuities. For example, FINRA Rule 2330(b)(1)(A)(i) requires firm representatives to describe to customers, in general terms, the various features of variable annuities prior to recommending their purchase or exchange. These features include potential surrender periods and surrender charges, tax penalties, mortality and expense fees, investment advisory fees, potential charges for and features of riders, the insurance and investment components, and market risk.

Examination Observations

Staff asked the examined firms to provide all of their disclosures to senior investors relating to the sale of investment products between January 2012 and October 2012. Staff believes that 89% of the firms provided senior investors with appropriate, detailed, and relevant disclosures concerning the recommended securities.

Staff noted that 68% of the firms had sold variable annuities, as one of the top five revenue-generating products, to their investors. In order to comply with the additional requirements in FINRA Rule 2330, many firms adopted a variable annuity disclosure form to evidence collection of the information required by the rule. This disclosure form described the features of the particular variable annuity such as mortality and expense fees, surrender fees and period, liquidity needs of the investor, all riders and account benefits from the variable annuity, and general information about the variable annuity. The majority of firms required their representatives to fill out and submit this form to supervisory officers prior to the variable annuity transaction.
In addition, firms often required customers to sign the disclosures provided to evidence receipt. These disclosures included the variable annuity application, acknowledgement of receipt of the prospectus, state forms when required,\textsuperscript{23} a schedule stating commission percentage breakdown and average fund expense ratio breakdown, mortality and expense fees, surrender fees and years remaining if applicable, and average fund expense ratio. When the variable annuity investment was a significant concentration of the customer’s assets, at least two firms required customers to sign a disclosure stating their awareness of the high concentration and their sufficiency of liquid assets to cover expenses. In cases where the investor was exchanging one variable annuity for another, almost 10% of firms provided disclosures that included a variable annuity transfer and exchange form, disclosure of surrender costs versus the benefits of the new products, a product comparison for the old and new products, and the total expenses of switch transactions.

Of the 11% of firms that appeared to fail to provide adequate disclosures to senior investors prior to a transaction, the majority (7%) did so in relation to variable annuity transactions. For example, the section of variable annuity forms or disclosure letters describing the comparative fees and benefits between the current and the proposed annuities was often incomplete. In addition, some firms provided what appeared to be inaccurate and misleading disclosures pertaining to variable annuities, such as by inaccurately disclosing the loss of a death benefit resulting from an exchange or by not clearly communicating, inaccurately describing, or failing to disclose surrender charges.

Staff also observed what appeared to be inaccurate, incomplete, or misleading disclosures in relation to affiliated private placements and REITs. For example, one firm made what appeared to be misrepresentations concerning premiums advanced, guaranteed interest payments, and return of principal, as well as omissions with regard to underpayment of insurance premiums, a 10% fee on amounts advanced, and an $11.7 million tax lien in private placement memorandums and market materials for affiliated private placements. Another firm provided what appeared to be misleading and inaccurate sales literature regarding REITs to customers prior to their solicited purchase and subsequent liquidations. This sales literature touted certain enhancements from the original offering such as lower fees, but the prospectuses revealed that fees for liquidation and operations actually increased.

**Conclusion**

In general, firms appeared to be providing appropriate disclosure to investors with regard to recommended securities. Staff observed what appeared to be inaccurate or incomplete disclosures primarily related to non-traditional securities such as variable annuities and REITs. Despite general compliance with disclosure requirements, it is important to note that it is unclear how well investors understand the disclosures they receive on recommended securities.
**Notable Practices: Disclosures**

- Requiring a customer signature on a disclosure form indicating that the customer received a prospectus when purchasing new open-end mutual funds.

- Requiring an explanation of the tax ramifications and alternative investment possibilities for all customers that purchase a variable annuity in an individual retirement account.

- Providing a detailed description of registered representative compensation (both direct and indirect) for each product sold on their website.

- Providing one comprehensive disclosure form that includes simple definitions for industry nomenclature and the schedule of fees and expenses related to specific securities.
Customer Complaints

Discussion of Relevant Rules

Investors dissatisfied with their accounts or the service provided by their registered representative or firm (among other reasons) may file a complaint with the firm, FINRA, the SEC, or other relevant regulatory agencies. Exchange Act Rule 17a-3(b)(18) requires firms to make a record of every written customer complaint (including electronic) received by the firm concerning its associated persons. The record must include the complainant’s name, address, and account number; the date the complaint was received; the name of each associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. The rule also requires firms to keep a record indicating that each of its customers has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to accounts may be directed. These firms are required to preserve these records for a period of not less than three years, the first two years in an easily accessible place. Exchange Act Rule 17a-4(j) requires registered firms to promptly produce these records to representatives of the SEC upon request.

FINRA Rule 4513(a) requires firms to keep and preserve in each office of supervisory jurisdiction, either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints. Rather than keep and preserve the customer complaint records required under this rule at the office of supervisory jurisdiction, the member may choose to make them promptly available at that office, upon request of FINRA. FINRA also requires firms to preserve customer complaint records for at least four years.

Rule 4513(b) clarifies that for purposes of this rule, “customer complaint” means any grievance by a customer or any person authorized to act on behalf of the customer involving the activities of the member or a person associated with the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

FINRA Rule 4530(a)(1)(B) requires each member to report to FINRA promptly, but in any event not later than 30 calendar days, after the member knows or should have known of the existence of any written customer complaints involving allegations of theft or misappropriation of funds or securities or of forgery. In addition, Rule 4530(d) requires each member to report to FINRA statistical and summary information regarding written customer complaints in such detail as FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. Supplementary Material .08 clarifies that a “customer” includes any person, other than a broker or dealer, with whom the member has engaged, or has sought to engage, in securities activities. It also clarifies that each member must
report the following under Rule 4530(d): any written customer complaint reported under Rule 4530(a)(1)(B), any written grievances by customers with whom the member has engaged in securities activities that involves the member or a person associated with the member, and any securities-related written grievance by customers with whom the member has sought to engage in securities activities that involves the member or a person associated with the member.

**Examination Observations**

Staff reviewed a sample of complaints received by the firms examined to identify any patterns or trends, to detect potential deficiencies in the handling of senior investor accounts, and to detect issues related to firm activities.

While firms maintained records of investor complaints, at least two firms (5%) had difficulty aggregating the number of complaints received from senior investors because they did not track or code the complaints using the age of the customer. Conversely, at least one firm used an internal “senior-related” complaint code which allowed the firm to easily identify senior investor complaints. This use of a senior-related complaint code may help the firm identify issues and concerns specific to senior investors so that they can make necessary changes to:

- improve the effectiveness and the efficiency of their programs;
- identify approaches to manage the increasing challenges of cognitive decline;
- provide products or services that better meet the needs of the senior investors;
- identify and prioritize the underlying risks appropriate to a firm’s business; and
- assess the integrity of firm controls to manage senior investor accounts.

Overall, customer complaints involved a wide range of securities and allegations of business conduct issues. The most common complaints among senior investors, with regard to business conduct issues, involved allegations of poor service or unreasonably high fees. Some of the other more common complaints involved allegations of misrepresentations, unsuitable investments, churning, unauthorized trading, and poor advice/recommendations. For example, one senior investor alleged that his account was churned and his registered representative engaged in unauthorized trading between 2007 and 2011. This firm terminated the registered representative after the representative acknowledged using discretion without obtaining prior written authorization. Another customer complaint alleged misrepresentation, unsuitable recommendations, and processing issues. Staff identified apparent deficiencies at the firm including failure to properly code customer complaints, failure to associate a registered representative to complaints, and failure to disclose complaints on the proper form (Form U4).

**Conclusion**

Staff observed that all of the firms examined were preserving and reporting customer complaints as required by the FINRA rules, but some had difficulty aggregating the number of senior
complaints in their system. The most common complaint themes among senior investors were allegations of poor service and unreasonably high fees.

**Notable Practices: Customer Complaints**

- Coding complaints as “senior related” in internal systems to enhance a firm’s ability to more appropriately respond to senior investors and analyze complaint data.
Supervision

Discussion of Relevant Rules

Section 15(b)(4)(E) of the Exchange Act authorizes the Commission to censure, place limitations on, suspend, or revoke the registration of any broker-dealer who has failed to reasonably supervise persons subject to its supervision with a view to preventing violations of the federal securities laws or rules.

Paragraph (a) of FINRA’s rule on supervision in effect at the time of the examinations (NASD Rule 3010) required each member to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that was reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Rule 3010(a) also clarified that the final responsibility for proper supervision rested with the member. Rule 3010(b) required each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engaged and to supervise the activities of registered representatives, registered principals, and other associated persons that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Rules of NASD.

Under this rule, firms that relied on automated supervisory systems must, at a minimum, require a principal, or principals, of the firm to:

- approve the criteria used in the automated supervisory system;
- audit and update the automated supervisory system as necessary to ensure compliance with applicable FINRA and federal securities rules and regulations; and
- review exception reports produced by the automated supervisory system.

A principal using an automated supervisory system, aid, or tool for the discharge of supervisory duties remained responsible for compliance with this rule.

Many FINRA rules expand on the requirements in NASD Rule 3010 with regard to supervision of specific products and firm activities. For example, FINRA Rule 2330(d) includes additional supervisory and recordkeeping requirements for firms that sell variable annuities. The member also must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in Rule 2330, implement surveillance procedures to determine if any of the member’s associated persons are effecting inappropriate exchanges, and have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges. As another example, FINRA Rule 2360(b)(20)(A) requires each member that conducts public customer options business to ensure that its written supervisory system policies and procedures adequately address this options business.
Examination Observations

Staff’s review of firm supervision of the business conducted with senior investors focused on firm supervisory processes, written supervisory procedures, exception reporting, internal controls, and compliance reviews. Staff observed that 77% of the firms maintained written supervisory procedures specific to supervision of firm representatives who deal with senior investors. At least 16% of firms used 70 years old as the age for implementing age-based policies and procedures, and at least 5% established age-based policies and procedures for investors as young as 60. Senior-related policies and procedures varied from firm to firm.

A majority of firms’ procedures addressed general senior-related supervision, but 11% of firms specifically cited or included some of the themes from FINRA Regulatory Notice 07-43 in their written supervisory procedures. This Regulatory Notice addresses firm obligations relating to senior investors and highlights industry best practices, suitability concerns, communications with the public (including use of designations and seminars), and dealing with investors with diminished capacity and occurrences of suspected financial abuse. Topics from the Regulatory Notice addressed in the firms’ procedures include the following:

- use of senior designations and credentials;
- approval channels for product recommendations;
- retail communications targeting senior investors;
- luncheon programs and seminars;
- heightened review of product suitability for seniors;
- heightened review of the use of margin accounts by seniors; and
- supervisory requirements to contact senior investors.

Multiple firms had written supervisory procedures that addressed suitability and know-your-customer requirements specifically for senior investors. For at least half of the firms, investor age played a critical role in establishing product suitability guidelines, assessing the suitability of transactions and accounts, and triggering exceptions or red flags. The procedures addressed the importance of obtaining investment profile information and a variety of senior-related topics including:

- dealing with investors who exhibit diminished capacity and other cognitive impairment;
- qualified plan rollovers;
- senior investors’ appetite for increasing yield;
- current and future prospects for employment;
- sources of income and whether it is fixed or will be in the future;
- primary expenses including whether the customer still has a mortgage;
- income needed to meet fixed or anticipated expenses;
- savings for retirement and how they are invested;
• health care insurance and future needs to fund health care costs;
• rapid changes to financial profiles based on life events;
• third-party emergency contact information and permission to contact the third party in the event an issue requires clarification; and
• income and estate tax liabilities.

At least 30% of the firms had suitability guidelines for senior investors purchasing certain securities such as variable annuities, non-traded REITs, structured products, low-priced securities, high-yield funds, and other alternative products. At least 23% of the firms maintained such procedures for variable annuities and options. Generally speaking, the suitability product guidelines did not prohibit purchases of a particular product or security by senior investors. Rather, the written supervisory procedures typically included additional requirements or guidelines that firm representatives must follow when senior investors were purchasing certain securities. While these guidelines varied by firm and by customer age, they indicated that firms are paying increased attention to the accounts of senior investors. Examples of these product guidelines or requirements included:

• concentration guidelines for the sale of alternative products to investors who are 75 or older and red flags regarding the sale of variable annuities to senior investors;
• outreach requirements to ensure that investors understood the characteristics of the securities and risks associated with the transactions, such as requiring supervisors to call investors aged 70 or older who purchased variable annuities or requiring compliance departments to speak with customers aged 70 or older who purchased variable annuities and customers aged 75 or older who purchased market-linked CDs;
• heightened supervisory reviews of senior purchases of specific securities;
• pre-approval of purchases by customers aged 70 or older or prohibitions on sales of structured products to customers above a specific age unless the firm granted an exception; and
• exception reports that identified transactions in options securities by senior investors.

Some firms implemented procedures to review transactions by senior investors and/or senior investor accounts over a defined time period to determine whether transactions were suitable and to identify trends. For example, one firm required supervisors to review variable annuity purchases by investors aged 70 or older on a quarterly basis in order to identify potential patterns of inappropriate variable annuity exchanges.

At least three firms used centralized supervisory review groups at their main or regional offices for new accounts or transactions by senior investors. For example, one firm required a centralized supervisory review group to approve new brokerage accounts for investors aged 80 or older and to make initial determinations as to whether the securities to be purchased appeared to be suitable. Other firms required transactions to be routed to a review group based on the product type. One firm had a policy prohibiting investors aged 65 or older from purchasing
variable annuities unless the firm representative documented additional written justifications for the purchases and the centralized review group approved the transaction based on its suitability.

Typically, firms’ supervisory structures were supported with some degree of automation. Firms used a wide variety of exception, supervisory, and compliance reports that considered investor age and other factors in tandem, such as liquid net worth, account losses, market performance, or the cost of insurance riders. One firm had as many as 150 suitability, solicitation, and disclosure exception reports for opening and handling accounts for senior investors.

Exception reports typically focused on trends involving the number of senior accounts opened over a defined time period, red flags for individual accounts and transactions, investor losses exceeding $25,000 within a 12-month period, or red flags identifying purchases exceeding 25% of an investor’s liquid net worth. Examples of exception reports include the following:

- purchases of $10,000 or more of equity securities by investors aged 65 or older;
- purchases of limited partnerships and unlisted REITs by investors aged 65 or older;
- firm representatives credited with 20 or more initial variable annuity purchases by senior investors during each quarter;
- withdrawals from accounts where a power of attorney has been executed; and
- electronic withdrawals from retirement accounts that may too quickly deplete the account balance when factoring in market performance, a customer’s life expectancy, and the quantity of money in an investor’s account.

At least seven firms had implemented comprehensive supervisory review systems and processes using automated systems and tools that were integrated with firms’ branch supervision and compliance departments. These systems were often complex and contained sophisticated rules that factored in a number of variables that used rule and risk-based scenarios to score investor accounts and transactions. These systems flagged accounts or transactions based on investor characteristics such as age, investment objective, products purchased, and concentration. Generally, the analytic methodologies used in these systems were dynamic, allowing firms to customize the scoring thresholds specifically in senior accounts that would trigger elevated supervisory reviews. Once a transaction or account triggered an exception, firms typically had specific escalation processes for supervisory or compliance review. For example, depending on a firm’s protocols, flagged transactions could be escalated to the next level of supervision or to the compliance department.

These systems were developed and supported either by third-party vendors or by the firms. Third-party systems contained exception reporting capabilities that allowed firms to customize exception reports and alerts based on firm criteria to identify questionable account activities. For example, one firm used an automated trade entry system that provided information in different formats for firm representatives and for supervisors or compliance personnel. The view for compliance personnel flagged transactions based on visual cues or risk scores. Color-coded flags based on various factors were used to identify inappropriate or abusive sales practice activity.
Customizing an automated supervisory system enabled firms to react to changing trends within the firm and industry by prioritizing their surveillance programs accordingly.

**Conclusion**

Most of the firms maintained written procedures related to supervision of firm representatives who deal with senior investors. Firms most frequently used the age of 70 when implementing age-based policies and procedures, but some firms established age-based policies and procedures for investors as young as 60. While general requirements, suitability requirements, product guidelines, and other supervisory procedures varied by firm and by customer age, they indicated that firms are paying increased attention to the accounts of senior investors. In addition, many firms are paying increased attention to transactions in non-traditional securities and have adopted specific supervisory procedures for investments such as variable annuities, non-traded REITs, structured products, and other alternative products. Finally, firm supervisory structures typically are supported by automated systems, which help firms identify and address issues related to senior investors.

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**Notable Practices: Supervision**

- Establishing firm policies that address FINRA Regulatory Notice 07-43, which discusses enhanced suitability practices, communications, dealing with investors suffering from diminished capacity, and occurrences of suspected financial abuse.

- Maintaining product suitability guidelines for senior investors purchasing complex or alternative products such as variable annuities, equity-indexed annuities, REITs, and options.

- Using a centralized supervisory review group to approve transactions and new accounts.

- Using automated systems and tools that are integrated with firm’s branch supervisory review system and compliance departments.
Conclusion

OCIE and FINRA staff regard compliance with laws, rules, and regulations applicable to dealings with senior investors to be a high regulatory priority, and the importance of this topic is likely to continue for both regulators and broker-dealers for many years.

The current environment, where traditional savings accounts and other conservative investments are earning historically low yields, may prompt firms to recommend and senior investors to purchase more non-traditional securities, such as variable annuities, non-traded REITs, structured products, and other alternative products. OCIE and FINRA staff are concerned that broker-dealers may be recommending unsuitable securities to senior investors or failing to adequately disclose the related risks. It is imperative that senior investors receive proper and understandable disclosures regarding the terms and risks related to securities recommended to them, particularly non-traditional investments.

This report highlights recent industry trends that have impacted the investment landscape and discusses the key observations and practices identified during the recent series of examinations with regard to securities sold to senior investors, training, use of senior designations, marketing and communications, account documentation, suitability, disclosures, customer complaints, and supervision. OCIE and FINRA staff are providing this information to broker-dealers to support their thoughtful analysis of their policies and procedures as they serve the needs of senior investors.

This Report is intended to highlight for firms risks and issues that staff of the SEC's Office of Compliance Inspections and Examinations and FINRA identified in the course of examinations of broker-dealers. In addition, this Report describes practices, issues, or factors that firms may consider to (i) assess their supervisory, compliance and/or other risk management systems related to risks and issues involving senior investors and (ii) make any changes, as may be appropriate, to address or strengthen such systems. These factors are not exhaustive, and they constitute neither a safe harbor nor “checklist.” Other factors besides those described in this Report may be appropriate alternatives or supplements to consider, and some of the factors may not be applicable to a particular firm’s business. They do not present any legal opinion or advice. Moreover, future changes in laws or regulations may supersede some of the factors or issues raised here. The adequacy of supervisory, compliance, and other risk management systems can be determined only with reference to the profile of each specific firm and other facts and circumstances.
Appendix A – Reference Material for Firms

Examination Priorities for 2015

- OCIE, SEC, Examination Priorities for 2015
- FINRA, 2015 Regulatory and Examination Priorities Letter
  http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602239.pdf

Securities

  http://investor.gov/sites/default/files/mutual-funds.pdf
- OIEA, SEC Investor Bulletin: Variable Annuities – An Introduction (February 2014)
  http://www.sec.gov/investor/alerts/ib_var_annuities.pdf
- FINRA Investor Alert: Public Non-Traded REITS – Perform a Careful Review Before Investing
  http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/REITS/P124232

Training

- FINRA Rule 1250: Continuing Education Requirements

Senior Designations

  http://www.sec.gov/investor/alerts/ib_making_sense.pdf
- OIEA, SEC Investor Information, “Senior” Specialists and Advisors: What You Should Know About Professional Designations
  http://www.sec.gov/investor/pubs/senior-profdes.htm
- NASD Rule 3010: Supervision (superseded by FINRA Rules 3110 and 3170)
- FINRA Rule 3110: Supervision (there are revisions that will be effective July 1, 2015)
• FINRA Regulatory Notice 11-52: Senior Designations  (November 2011)  
• FINRA, Senior Designations  
  http://www.finra.org/industry/issues/seniors/p124734
• CFPB, Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks (April 2013)  
• North American Securities Administrators Association, Regulators Urge Investors to Carefully Check Credentials of ‘Senior Specialists’ (December 2005)  

Marketing and Communications

• FINRA Rule 2210: Communications with the Public  
• Exchange Act Rule 17a-4, Records to be preserved by certain exchange members, brokers and dealers  
  http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:4.0.1.1.1&rgn=div5#se17.4.240_117a_64

Account Documentation

• Exchange Act Rule 17a-3, Records to be made by certain exchange members, brokers and dealers  
  http://www.ecfr.gov/cgi-bin/text-idx?SID=1f5fa29b3dd8174ea183036757d3d99a&node=pt17.4.240&rgn=div5#se17.4.240_117a_63
• FINRA Rule 2090: Know Your Customer  
• FINRA Rule 4512(a)(1): Customer Account Information  
• FINRA New Account Application Template  
  http://www.finra.org/Industry/Tools/P117268

Suitability

• OIEA, SEC Investor Information, Suitability  
  http://www.sec.gov/answers/suitability.htm
OIEA, SEC Investor Information, SEC Center for Complaints and Enforcement Tips
http://www.sec.gov/complaint.shtml
  o Tips, Complaints and Referrals Portal
    https://denebleo.sec.gov/TCRExternal/disclaimer.xhtml

FINRA Rule 2111: Suitability
FINRA Rule 2330: Members’ Responsibilities Regarding Deferred Variable Annuities
FINRA Regulatory Notice 13-31: Suitability (September 2013)

Disclosures

- Section 17(a)(2) of the Securities Act
  http://www.sec.gov/about/laws/sa33.pdf
- Section 5 of the Securities Act
  http://www.sec.gov/about/laws/sa33.pdf
- FINRA Rule 2010: Standards of Commercial Honor and Principles of Trade
- FINRA Rule 2330: Members’ Responsibilities Regarding Deferred Variable Annuities

Customer Complaints

- Exchange Act Rule 17a-3, Records to be made by certain exchange members, brokers and dealers
  http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:4.0.1.1.1&rgn=div5#se17.4.240.117a_64
- Exchange Act Rule 17a-4, Records to be preserved by certain exchange members, brokers and dealers
  http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:4.0.1.1.1&rgn=div5#se17.4.240.117a_64
- FINRA Rule 4513: Records of Written Customer Complaints
- FINRA Rule 4530: Reporting Requirements
  http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9819
Supervision

- Section 15(b)(4)(E) of the Exchange Act
  http://www.sec.gov/about/laws/sea34.pdf
- FINRA Rule 2330(d): Members’ Responsibilities Regarding Deferred Variable Annuities (Supervisory Procedures)
- FINRA Rule 2360(b)(20)(A): Options (Duty to Supervise)
- NASD Rule 3010: Supervision (superseded by FINRA Rules 3110 and 3170)
- FINRA Rule 3110: Supervision (there are revisions that will be effective July 1, 2015)
- NASD Notice to Members 05-50: Member Responsibilities for Supervising Sales of Unregistered Equity-Indexed Annuities (August 2005)

Additional Resources

- SEC Seniors Summit, in coordination with FINRA, NASAA and AARP (September 2007)
  http://www.connectlive.com/events/secseniorssummit/
- SEC-OCIE, NASAA, and FINRA, Protecting Senior Investors: Report of Examinations of Securities Firms Providing “Free Lunch” Sales Seminars (September 2007)
- SEC-OCIE, NASAA, and FINRA, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors (September 2008)
- SEC-OCIE, NASAA, and FINRA, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors: 2010 Addendum (August 2010)
- SEC, Senior Investors http://www.sec.gov/divisions/marketreg/seniorinvestors.htm
- SEC Charges Operators of Boiler Room Scheme Targeting Seniors to Invest in Football-Related Scam
- FINRA Regulatory Notice 07-43: Senior Investors (September 2007)
- FINRA Regulatory Notice 08-27: Misleading Communications About Expertise (May 2008)


- FINRA E-Learning Courses http://www.finra.org/Industry/Education/OnlineLearning/E-learningCourses/index.htm
  - Senior Investor Issues: Diminished Decisional Capacity
  - Senior Investor Suitability Considerations
  - Supervisory Considerations for Working with Seniors
Appendix B – Description of Securities

Below is a description of the top revenue-generating securities that the examined firms sold to senior investors and some of the potential benefits and risks related to these securities:

(1) Mutual funds pool investor money to purchase securities. Investors may purchase shares in the fund, from the fund itself, or through a broker for the fund. Open-end mutual funds are a type of investment company. They must register under the Investment Company Act of 1940 and issue securities under the Securities Act. Each mutual fund must deliver a prospectus to customers under Section 10(a) of the Securities Act. Risks related to mutual funds may include market risk and the risk derived from its underlying assets. Different types of mutual funds may also be subject to different types or levels of volatility, fees, and expenses.26

(2) Variable annuities are securities regulated by the SEC.27 They are contracts between an investor and an insurance company under which the investor makes a lump sum payment or a series of payments in exchange for periodic payments by the insurer at some agreed upon future date.28 Variable annuities offer certain potential advantages to investors. For example, they are a tax-deferred investment, offer a range of investment options, and often provide riders such as a guaranteed death benefit or other guarantees. On the other hand, variable annuities may have a surrender period that starts after the initial purchase and may last six to eight years or sometimes as long as ten years. If funds are withdrawn during the surrender period, the insurer will assess a surrender charge, typically a percentage of the amount withdrawn, which declines gradually over the period.

(3) Equities are a type of security that gives holders a share of ownership in a company.29 Advantages to holding equities may include income from dividends, growth, and liquidity. Equities bear risk such as the potential realized or unrealized losses from market fluctuations.

(4) Fixed income investments include individual bonds and market-linked CDs. These investments may provide payments of a fixed amount on a fixed schedule to the owner for the duration of the investment. Although the consistency in the stream of income may be attractive, there are risks associated with each type of investment. Some risks may include market risk, credit risk, and default risk.30

(5) A UIT is a type of investment company that issues redeemable securities; makes a one-time public offering of a specific, fixed number of units; has a termination date that is established when it is created; does not actively trade its investment portfolio; and does not have a board of directors, corporate officers, or an investment adviser to render advice during the life of the trust. The amount of capital invested determines the proportionate share of principal and interest the investor receives from the trust. A UIT may buy back outstanding shares of the trust at the current net asset value, and shares may be redeemed at any time. UITs may carry risks such as illiquidity or inflation risk as well as risks derived from the underlying assets.31
An ETF is an investment company that is traded like equity securities on an exchange. Although classified as an open-end company or UIT, it differs in many respects. For example, an ETF does not sell individual shares; investors usually purchase creation units with a basket of securities and subsequently sell those shares on the secondary market or sell creation units back to the ETF. An ETF holds assets such as equities, commodities, or bonds and trades close to its net asset value over the course of the trading day. Most ETFs track an index, a commodity, or a basket of assets such as an equity index or bond index. ETFs seek to achieve their stated objectives on a daily basis. Performance over longer periods of time may differ significantly from the index performance over those time periods. Some ETFs pursue active management strategies and publish their portfolio holdings on a daily basis. These products share many of the same risks as mutual funds.

REITs are corporations, trusts, or associations that own and usually operate income-producing real estate or real estate-related assets. REITs provide investors with a way to earn a share of income produced from commercial real estate without actually owning commercial real estate. Investors can purchase shares of REITs through a broker-dealer, and these shares typically offer high yields. Many REITs are registered with the SEC and are publicly traded on a stock exchange, offering investors a liquid investment in income producing real estate or real estate-related assets. There also are REITs that are registered with the SEC but are not publicly traded on an exchange. These non-traded REITs are generally illiquid investments with limited ability to redeem shares because there is no public market and potentially with high fees associated with their sale.

The definition of an alternative investment can vary, as they generally cannot be directly classified as traditional securities such as stocks or bonds. They can include exchange-traded notes, hedge funds, and private placements. Alternative investments can help investors diversify exposure away from mainstream markets (e.g., because of their low correlation coefficients with both equities and fixed income). Potential risks include difficulty in valuation, potentially high purchase costs and large initial investment, limited historical data, lack of liquidity, and complexity.

Structured securities products include structured notes and other market-linked securities, reverse convertible notes, principal-protected notes, and collateralized debt obligations. Structured products are not defined in the federal securities laws. They are sold in the retail market and usually consist of a traditional security combined with one or more other asset classes, typically a bond and an option component. As a result, structured products typically have some form of option or embedded financial derivative exposure. Structured products may offer investors varying levels of principal protection, high interest payments, leveraged exposure to the underlying asset class, and a fixed maturity date (in most cases), and they may seek to achieve a highly customized risk-return objective. Structured products, however, often carry complex risks, including default risk, lack of liquidity, lack of transparency, and valuation difficulty.
Endnotes

1 The views expressed herein are those of the staff of OCIE, in consultation with other staff of the Securities and Exchange Commission (“SEC” or “Commission”) including the Division of Trading and Markets and in coordination with FINRA. The Commission has expressed no view on the contents of this report. This document was prepared by the SEC staff, in coordination with FINRA, and is not legal advice.


3 Id. at 3.


13 12 CFR 208.62.


16 NASD Rule 3010 (a, b, c, d, and g) has been superseded by FINRA Rules 3110 and 3170. Retired NASD Rule 3010 is available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11763.


FINRA Rule 2210(b)(1)(C) and (b)(1)(D) provide certain exceptions from this requirement. For example, pursuant to FINRA Rule 2210(b)(1)(C), principal review is not required for communications which another broker-dealer filed with FINRA’s Advertising Regulation Department and received a letter from the Department stating that the communication appears consistent with applicable standards. Also, FINRA Rule 2210(b)(1)(D) exempts from prior to use principal review any retail communication that is posted in an online interactive forum so long as the broker-dealer supervises the use of such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(b).

Using customer account records that are aged more than 36 months may increase the likelihood of unsuitable recommendations due to potential changes in customers’ personal and financial circumstances.

The voluntary template was created with input from industry professionals and other regulators to present investor with information in a clear, intuitive format. The template includes instructions and other information presented in plain English, highlights of key disclosures, and incorporation of related investor education information. For additional information, see http://www.finra.org/Industry/Tools/P117268.


Numerous individual states prescribe specific form requirements for insurance sales. These form templates are developed and distributed by the states to the insurance carriers. The carriers then incorporate and provide the forms to the insurance agencies that offer the product.

NASD Rule 3010 (a, b, c, d, and g) has been superseded by FINRA Rules 3110 and 3170. Retired NASD Rule 3010 is available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11763.


For additional information, see “Mutual Funds,” available at http://www.sec.gov/answers/mutfund.htm.

Annuities, such as fixed annuities, are not securities and are thus not regulated by the SEC; they fall under the purview of state insurance regulators.

For additional information, see “Variable Annuities,” available at http://www.sec.gov/answers/varann.htm.

For additional information, see “Stocks,” available at http://investor.gov/investing-basics/investment-products/stocks#.VNN73zZOmUl.

For additional information, see “Bonds,” available at http://investor.gov/investing-basics/investment-products/bonds#.VL_yozZOnmt.

For additional information, see “Unit Investment Trusts (UITs),” available at http://www.sec.gov/answers/uit.htm.

For additional information, see “Exchange-Traded Funds,” available at http://www.sec.gov/answers/etf.htm.

For additional information, see “Real Estate Investment Trusts (REITs),” available at http://www.sec.gov/answers/reits.htm.


Executive Summary
FINRA seeks comment on proposed rules addressing the financial exploitation of seniors and other vulnerable adults. FINRA is proposing: (1) amendments to FINRA Rule 4512 (Customer Account Information) to require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer’s account; and (2) the adoption of new FINRA Rule 2165 (Financial Exploitation of Specified Adults) to permit qualified persons of firms to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers.

The proposed rule text is available in Attachment A.

Questions regarding this Notice should be directed to:

- James S. Wrona, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8270;
- Ann-Marie Mason, Director and Counsel, Shared Services, at (202) 728-8231; or
- Jeanette Wingler, Assistant General Counsel, OGC, at (202) 728-8013.
Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by November 30, 2015.

Comments must be submitted through one of the following methods:

- Emailing comments to pubcom@finra.org;
- Mailing comments in hard copy to:
  Marcia E. Asquith  
  Office of the Corporate Secretary  
  FINRA  
  1735 K Street, NW  
  Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: All comments received in response to this Notice will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.1

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).2

Background & Discussion

FINRA’s experience with its Securities Helpline for Seniors™ has highlighted issues relating to financial exploitation of this group of investors.3 Among these issues is a firm’s ability to quickly and effectively address suspected financial exploitation of seniors and other vulnerable adults consistent with FINRA rules. Currently, FINRA rules do not explicitly permit firms to contact a non-account holder or to place a temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation of a senior or other vulnerable adult.

To address these issues, FINRA is proposing rules to provide firms with a way to respond to situations in which they have a reasonable basis to believe that financial exploitation of vulnerable adults has occurred, is occurring, has been attempted or will be attempted.4 FINRA believes that a firm can better protect its customers from financial exploitation if the firm can: (1) place a temporary hold on a disbursement of funds or securities from a customer’s account; and (2) notify a customer’s trusted contact (or, if unavailable, immediate family member) of the firm’s decision to place the temporary hold on a disbursement from the customer’s account.
Proposed Rules

Trusted Contact Person—Proposed Amendments to Rule 4512

FINRA is proposing to amend Rule 4512 to require firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer’s account. The proposal does not prohibit firms from opening and maintaining an account if a customer fails to identify a trusted contact as long as the firm made reasonable efforts to obtain it. FINRA believes that asking a customer to provide the name and contact information for a trusted contact person ordinarily would constitute reasonable efforts to obtain the information and would satisfy the proposed rule’s requirements.

Consistent with the current requirements of Rule 4512, a firm would not need to attempt to obtain the name of and contact information for a trusted contact person for currently existing accounts until such time as the firm updates the information for the account either in the course of the firm’s routine and customary business or as otherwise required by applicable laws or rules. With regard to updating the contact information once provided, FINRA believes that firms should consider asking the customer to review and update the name of and contact information for a trusted contact person periodically, such as when updating account information pursuant to SEA Rule 17a-3, or when there is a reason to believe that there has been a change in the customer’s situation.

FINRA intends the trusted contact person to be a resource for the firm in administering the customer’s account and in responding to possible financial exploitation. The proposed rule would require that the trusted contact person be age 18 or older and not be authorized to transact business on behalf of the account. A firm may elect to notify an individual that he or she was named as a trusted contact person; however, the proposed rule would not require notification.

The proposed rule would also require that, at the time of account opening, a firm shall disclose in writing (which may be electronic) to the customer that the firm or an associated person is authorized to contact the trusted contact person and disclose information about the customer’s account to confirm the specifics of the customer’s current contact information, health status, and the identity of any legal guardian, executor, trustee or holder of a power of attorney, and as otherwise permitted by proposed Rule 2165. In addition, a firm would be required to provide this disclosure when it attempts to obtain the name of and contact information for a trusted contact person when updating information for currently existing accounts either in the course of the firm’s routine and customary business or as otherwise required by applicable laws or rules. Firms would be required to provide this disclosure at account opening or when updating information for currently existing accounts, even if a customer fails to identify a trusted contact. As noted below, pursuant to proposed Rule 2165, when information about a trusted contact person is
available, a firm must attempt to notify the trusted contact person that the firm has placed a temporary hold on a disbursement of funds or securities from a customer’s account, unless the firm reasonably believes that the trusted contact person is engaged in the financial exploitation.\(^7\)

**Temporary Hold on Disbursement of Funds or Securities—Proposed New Rule 2165**

FINRA is also proposing to permit “qualified persons” who reasonably believe that financial exploitation is occurring to place temporary holds on disbursements of funds or securities from the accounts of “specified adult” customers. Proposed Rule 2165 creates no obligation to withhold disbursement of funds or securities where financial exploitation may be occurring. Accordingly, Supplementary Material to proposed Rule 2165 would expressly state that the rule provides firms with a safe harbor when they exercise discretion in placing temporary holds on disbursements of funds or securities from the account of a specified adult under the circumstances denoted in the rule. It would further state that the rule does not require firms to place temporary holds on disbursements of funds or securities from the account of a specified adult.\(^8\)

FINRA believes that “specified adults” may be particularly susceptible to financial exploitation.\(^9\) Proposed Rule 2165 would define “specified adult” as: (A) a natural person age 65 and older;\(^10\) or (B) a natural person age 18 and older who the firm reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. Supplementary Material to proposed Rule 2165 would provide that a firm’s reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the firm’s business relationship with the person.\(^11\)

The proposed rule would denote the persons who can place a temporary hold on a disbursement as “qualified persons,” which would mean associated persons of a firm who serve in supervisory, compliance or legal capacities that are reasonably related to the account of the specified adult. The proposed rule would define the term “account” to include any account of a firm for which a specified adult has the authority to transact business.

FINRA has proposed a broad definition of “financial exploitation.” Specifically, financial exploitation would include: (A) the wrongful or unauthorized taking, withholding, appropriation, or use of a specified adult’s funds or securities; or (B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority, regarding a specified adult, to: (i) obtain control, through deception, intimidation or undue influence, over the specified adult’s money, assets or property; or (ii) convert the specified adult’s money, assets or property.
Proposed Rule 2165 would permit a qualified person to place a temporary hold on a disbursement of funds or securities from the account of a specified adult if the qualified person reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted. If a firm places such a hold, the proposed rule would require the firm to immediately initiate an internal review of the facts and circumstances that caused the qualified person to reasonably believe that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted. In addition, the proposed rule would require the firm to provide notification of the hold and the reason for the hold to all parties authorized to transact business on the account and, if available, the trusted contact person, no later than two business days after placing the hold. While oral or written (including electronic) notification would be permitted under the proposed rule, a firm would be required to retain records evidencing the notification.

If the trusted contact person is not available or the firm reasonably believes that the trusted contact person has engaged, is engaged or will engage in the financial exploitation of the specified adult, the proposal states that the firm shall attempt to contact an immediate family member, unless the firm reasonably believes that the immediate family member has engaged, is engaged or will engage in the financial exploitation of the specified adult. For purposes of proposed Rule 2165, FINRA would consider the lack of an identified trusted contact person, the inability to contact the trusted contact person or a person’s refusal to act as a trusted contact person to mean that the trusted contact person was not available. The same is true of an immediate family member. A firm may use the temporary-hold provision under proposed Rule 2165 when a trusted contact or an immediate family member is not available.

While the proposed rule does not require notifying the customer’s registered representative of suspected financial exploitation, a customer’s registered representative may be the first person to detect potential financial exploitation. If the detection occurs in another way, a firm may choose to notify and discuss the suspected financial exploitation with the customer’s registered representative, unless the firm suspects that the registered representative is involved in the financial exploitation.

The temporary hold authorized by proposed Rule 2165 would expire not later than 15 business days after the date that the qualified person first placed the temporary hold on the disbursement of funds or securities, unless sooner terminated or extended by an order of a court of competent jurisdiction. In addition, provided that the firm’s internal review of the facts and circumstances supports its reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted, the proposed rule permits the temporary hold to be extended by a qualified person for an additional 15 business days, unless sooner terminated by an order of a court of competent jurisdiction.
Proposed Rule 2165 would require firms to retain records related to compliance with the rule, which shall be readily available to FINRA, upon request. The retained records shall include records of: (1) requests for disbursement that may constitute financial exploitation of a specified adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted or will be attempted underlying the decision to place a temporary hold on a disbursement; (3) notification(s) to the relevant parties pursuant to the rule; and (4) the internal review of the facts and circumstances supporting the qualified person's reasonable belief that the financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted.

The proposed rule would require a firm that anticipates using a temporary hold in appropriate circumstances to establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the rule, including, but not limited to, procedures on the identification, escalation and reporting of matters related to financial exploitation of specified adults. The proposed rule would also require firms to develop and document specific training policies or programs reasonably designed to ensure that registered persons comply with the requirements of the rule.

**Economic Impact Assessment**

FINRA’s experience with its Securities Helpline for Seniors has reaffirmed its understanding of the risks to customers of financial exploitation. The proposed rules are intended to further the protection of potentially at-risk customers by relieving firms from those FINRA rules that might otherwise discourage firms from exercising discretion to protect customers through placing a temporary hold on disbursements of funds or securities. Such a hold, combined with contact with a trusted person, also may permit these customers to stop unwanted disbursements and better protect themselves from financial exploitation.

The proposed rules not only better safeguard customers, to the extent that firms today do not provide protections for specified adults, but also better protect those firms that are already doing so.

The proposed amendments to Rule 4512 would require firms to attempt to collect information about a trusted person at the time of account opening or in the course of updating information for the account. Firms also would incur additional responsibilities to provide disclosure about the firm’s right to share certain private information with the customer’s trusted contact.

In addition, there may be significant impacts with respect to legal risks and attendant costs to firms that choose to rely on the proposed rule in placing temporary holds on disbursements; although the direction of the impact is ambiguous. The proposed rules
may provide some legal protection to firms if they are sued for withholding disbursements where there is a reasonable belief of financial exploitation. At the same time, while proposed Rule 2165 creates no obligation to withhold disbursement where financial exploitation may be occurring or to refrain from opening or maintaining an account where no trusted contact is identified, this proposed rule might serve as a rationale for a private action against firms that do not withhold disbursements when there is a reasonable belief of financial exploitation. To reduce the latter risk, proposed Rule 2165 would explicitly state that it provides firms with a safe harbor when they exercise discretion in placing temporary holds on disbursements of funds or securities, but would not require firms to place such holds.

To the extent that firms today have reasons to suspect financial exploitation of their customers, they may make judgments with regard to making or withholding disbursements of funds or securities. As such, these firms may already face litigation risk with regard to their actions, whether or not they choose to disburse funds or securities.

Request for Comment

In addition to generally requesting comments, FINRA specifically requests comment on the following questions:

1. Should the scope of the proposed rules be expanded to encompass other requirements?
2. Are there approaches other than the proposed rulemaking that FINRA should consider?
3. Should Rule 4512 require customer consent to contact the trusted contact or is customer notice sufficient? Should the types of information that may be disclosed to the trusted contact under Rule 4512 be modified?
4. What are firms’ current practices when they suspect financial exploitation has occurred, is occurring, has been attempted or will be attempted? Would the proposed rules change firms’ current practices?
5. What are firms’ views on any potential legal risks associated with placing or not placing temporary holds on disbursements of funds or securities at present and under the proposal?
6. Should the ages used in the definition of “specified adult” in proposed Rule 2165 be modified or eliminated?
7. Should the definition of “account” be expanded to include accounts for which a specified adult is a named beneficiary?
8. Should the scope of the persons included in the definition of “qualified person” in proposed Rule 2165 be modified?
9. Is the two business day period for notifying the appropriate parties under proposed Rule 2165 appropriate? If not, what circumstances may warrant a shorter or longer period?

10. Should the permissible time periods for placing and extending a temporary hold pursuant to proposed Rule 2165 be modified?

11. Should FINRA mandate specific procedures for escalating matters related to financial exploitation?

FINRA also specifically requests comments on the economic impact and expected beneficial results of the proposed rules.

12. What direct costs for the firm will result from the proposed rules?

13. What indirect costs will arise for the firm from the proposed rules?

14. Will the proposed rules impose different costs on firms of different sizes or with different business models?

15. What benefits will result for customers from the proposed rules? How extensive are these benefits?

16. What costs for customers will result from the proposed rules?

17. Are the costs imposed by the rules warranted by the potential benefit to customers arising from the proposed rules?

18. How will the proposed rules change business practices and competition among firms? Will these impacts differently affect small or specialized broker-dealers?

19. Are there other means or mechanisms to efficiently and effectively provide customers with suitable protections as contemplated by the SEA?

We request quantified comments where possible.
Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See Notice to Members 03-73 (November 2003) (Online Availability of Comments) for more information.

2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.


4. FINRA notes that Delaware, Missouri and Washington have enacted statutes that permit financial institutions, including broker-dealers, to place temporary holds on “disbursements” or “transactions” if financial exploitation of covered persons is suspected. See Del. Code Ann. tit. 31, § 3910 (2015), Mo. Rev. Stat. §§ 409.600-630 (2015), and Wash. Rev. Code §§ 74.34.215, 220 (2015). Due to the small number of state statutes currently in effect and the lack of a uniform state or federal standard in this area, FINRA believes that the proposed rules would aid in the creation of a uniform national standard for the benefit of firms and their customers.

5. While the proposed amendments do not specify what contact information should be obtained, FINRA believes that a mailing address, phone number and email address for the trusted contact person may be the most useful to firms.

6. FINRA also notes that a customer’s request to change his or her trusted contact person may be a possible red flag of financial exploitation (e.g., a senior customer changing his trusted contact person from an immediate family member to a previously unknown third party).

7. With respect to disclosing information to the trusted contact person, FINRA notes that Regulation S-P excepts from the Regulation’s notice and opt-out requirements disclosures made: (A) to comply with federal, state, or local laws, rules and other applicable legal requirements; or (B) made with client consent, provided such consent has not been revoked. See 17 C.F.R §§ 248.15(a)(1) and (a)(7)(i). FINRA believes that disclosures to a trusted contact person pursuant to proposed Rules 2165 or 4512 or with unrevoked customer consent would be consistent with Regulation S-P.

8. FINRA understands that some firms, pursuant to state law or their own policies, may already place temporary holds on disbursements from customers’ accounts where financial exploitation is suspected.

9. See National Senior Investor Initiative: A Coordinated Series of Examinations, SEC’s Office of Compliance Inspections and Examinations and FINRA (Apr. 15, 2015) (noting the increase in persons aged 65 and older living in the United States and the concentration of wealth in those persons during a time of downward yield pressure on conservative income-producing investments) (hereinafter Senior Investor Initiative). See also The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America’s Elders (June 2011) (noting the many forms of
vulnerability that “make elders more susceptible to [financial]abuse,” including, among others, poor physical or mental health, lack of mobility, and isolation; Protecting Elderly Investors from Financial Exploitation: Questions to Consider (Feb. 11, 2015) (noting that one of the greatest risk factors for diminished capacity is age).

10. See, e.g., Aging Statistics, U.S. Department of Health and Human Services Administration on Aging (referring to the “older population” as persons “65 years or older”); Senior Investor Initiative (noting the examinations underlying the report “focused on investors aged 65 years old or older”).

11. FINRA notes that a firm may not ignore contrary evidence in making a determination based on the facts and circumstances observed in the firm’s business relationship with the natural person (e.g., a court order finding a customer to be legally incompetent).

12. Proposed Rule 2165 would apply only to disbursements of funds or securities from the account of a specified adult and would not apply to transactions in securities.

13. For purposes of proposed Rule 2165, the term “immediate family member” shall include a spouse, child, grandchild, parent, brother or sister, mother-in-law or father-in-law, brother-in-law or sister-in-law, and son-in-law or daughter-in-law, each of whom must be age 18 or older.
ATTACHMENT A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

Text of Proposed Changes to FINRA Rule 4512

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

* * * * *

4500. BOOKS, RECORDS AND REPORTS

* * * * *

4512. Customer Account Information

(a) Each member shall maintain the following information:

(1) for each account:

(A) customer’s name and residence;

(B) whether customer is of legal age;

(C) name(s) of the associated person(s), if any, responsible for the account, and if multiple individuals are assigned responsibility for the account, a record indicating the scope of their responsibilities with respect to the account, provided, however, that this requirement shall not apply to an institutional account;

(D) signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member’s policies and procedures for acceptance of accounts; [and]

(E) if the customer is a corporation, partnership or other legal entity, the names of any persons authorized to transact business on behalf of the entity; and

(F) subject to Supplementary Material .06, name of and contact information for a trusted contact person who may be contacted about the customer’s account, is age 18 or older and not authorized to transact business on behalf of the account; provided, however, that this requirement shall not apply to an institutional account.
(2) through (3) No Change.

(b) A member need not meet the requirements of this Rule with respect to any account that was opened pursuant to a prior FINRA rule until such time as the member updates the information for the account either in the course of the member’s routine and customary business or as otherwise required by applicable laws or rules.

(c) No Change.

Supplementary Material: 

.01 through .05 No Change.

.06 Trusted Contact Person

(a) With respect to paragraph (a)(1)(F) of this Rule, at the time of account opening, a member shall disclose in writing, which may be electronic, to the customer that the member or an associated person of the member is authorized to contact the trusted contact person and disclose information about the customer’s account to confirm the specifics of the customer’s current contact information, health status, and the identity of any legal guardian, executor, trustee or holder of a power of attorney, and as otherwise permitted by Rule 2165.

(b) The absence of the name of or contact information for a trusted contact person shall not prevent a member from opening or maintaining an account for a customer, provided that the member makes reasonable efforts to obtain the name of and contact information for a trusted contact person.
2165. Financial Exploitation of Specified Adults

(a) Definitions

(1) For purposes of this Rule, the term “Specified Adult” shall mean: (A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

(2) For purposes of this Rule, the term “Account” shall include any account of a member for which a Specified Adult has the authority to transact business.

(3) For purposes of this Rule, the term “Qualified Person” shall mean an associated person of a member who serves in a supervisory, compliance or legal capacity that is reasonably related to the Account of the Specified Adult.

(4) For purposes of this Rule, the term “Trusted Contact Person” shall mean the person who may be contacted about the Specified Adult’s Account in accordance with Rule 4512.

(5) For purposes of this Rule, the term “immediate family member” shall include a spouse, child, grandchild, parent, brother or sister, mother-in-law or father-in-law, brother-in-law or sister-in-law, and son-in-law or daughter-in-law, each of whom must be age 18 or older.

(6) For purposes of this Rule, the term “financial exploitation” shall include:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult’s funds or securities; or
(B) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a Specified Adult, to:

(i) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or

(ii) convert the Specified Adult's money, assets or property.

(b) Temporary Hold on Disbursements

(1) A Qualified Person may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult if:

(A) The Qualified Person reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) The member not later than two business days provides notification of the temporary hold and the reason for the temporary hold to:

(i) all parties authorized to transact business on the Account; and

(ii) the Trusted Contact Person, unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult, in which case the member shall attempt to contact an immediate family member of the Specified Adult, if available, unless the member reasonably believes that the immediate family member has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(C) The member immediately initiates an internal review of the facts and circumstances that caused the Qualified Person to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.

(2) The temporary hold authorized by this Rule will expire not later than 15 business days after the date that the Qualified Person first placed the temporary hold on the disbursement of funds or securities, unless sooner terminated by an order of a court of competent jurisdiction or extended either by an order of a court of competent jurisdiction or pursuant to paragraph (b)(3) of this Rule.
(3) Provided that the member’s internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the Qualified Person’s reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold authorized by this Rule may be extended by a Qualified Person for no longer than 15 business days following the date authorized by paragraph (b)(2) of this Rule, unless sooner terminated by an order of a court of competent jurisdiction.

(c) Record Retention

Members shall retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request. The retained records shall include, but shall not be limited to, records of: (1) request(s) for disbursement that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement; (3) notification(s) to the relevant parties pursuant to paragraph (b)(1)(B) of this Rule; and (4) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule.

• • • Supplementary Material: --------------

.01 Applicability of Rule. This Rule provides members with a safe harbor when they exercise discretion in placing temporary holds on disbursements of funds or securities from the Account of a Specified Adult under the specified circumstances denoted in the Rule. This Rule does not require members to place temporary holds on disbursements of funds or securities from the Account of a Specified Adult.

.02 Supervision. In addition to the general supervisory and recordkeeping requirements of Rules 3110, 3120, 3130, 3150, and Rule 4510 Series, a member relying on this Rule must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with this Rule, including, but not limited to, procedures related to the identification, escalation and reporting of matters related to financial exploitation of Specified Adults.

.03 Training. A member relying on this Rule must develop and document specific training policies or programs reasonably designed to ensure that registered persons comply with the requirements of this Rule.
.04 Reasonable Belief of Mental or Physical Impairment. A member’s reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member’s business relationship with the natural person.
### Introduction

On April 20, 2015, FINRA launched a significant new initiative—the FINRA Securities Helpline for Seniors (HELPSTM)—to broaden its investor protection efforts. As part of FINRA’s commitment to the protection of senior investors, the Helpline is intended to be the “go-to” resource for senior investors with securities-related questions and concerns. FINRA’s focus on senior investors has steadily increased over the past decade due to growing investor protection concerns and the unprecedented demographic shift underway in the United States, as the “Baby Boom” generation (those born from 1946 to 1964) transitions from the workforce to retirement. In 2010, the U.S. population over age 65 was approximately 40 million; by 2030 it is projected to grow by 80 percent to 72 million people. This presents significant investor protection challenges. The effects of aging can diminish an individual’s ability to navigate the complexities of financial services, making seniors a prime target for financial exploitation, fraud and deception. Compounding these challenges, once harmed financially, seniors typically have little or no ability to rebuild vital lost assets.

This year-end report provides an overview of the Helpline’s operation since its April launch, describes how the Helpline works and complements FINRA’s broader regulatory programs, and highlights situations where the Helpline has made a real impact in seniors’ lives. The report alerts investors and firms to common scams that target senior investors. Finally, the report shares effective practices that firms should consider.

### Questions/Further Information

Inquiries regarding this report may be directed to Daniel M. Sibears, Executive Vice President, Regulatory Operations/Shared Services, at (202) 728-6911; Michael Rufino, Executive Vice President, Member Regulation, Sales Practice, at (212) 858-4487; Jeffrey Pasquerella, Senior Vice President, Member Regulation, Sales Practice, at (561) 443-8067; or Steve Polansky, Senior Director, Regulatory Operations/Shared Services, at (202) 728-8331.
Senior Helpline Report – December 2015

Seniors: Targets for Financial Exploitation

Seniors are a large and growing population

- The number of people 85 years and older is projected to increase by slightly over 50 percent between 2012 and 2030, and a further 100 percent by 2050.4

Seniors have money

- In 2014, retirement assets of those between 65-74 years old were estimated at $3.5 trillion.5

Some seniors are vulnerable

- Estimates are that mild cognitive impairment affects more than 20 percent of adults over age 70 without dementia, and that 5.1 million people over age 65 suffer from Alzheimer’s disease.6

Seniors may chase yield

- Historically low interest rates have prompted some income-seeking investors, including seniors, to chase yield, and this may increase their vulnerability to certain scams.

FINRA Securities Helpline for Seniors

- 1-844-57-HELPS (844-574-3577)
- www.finra.org/seniorhelpline

FINRA and Senior Investors

The Helpline builds on FINRA’s longstanding commitment to protecting senior investors. Over the years, FINRA has used a range of regulatory tools to achieve this objective. Through our examination and enforcement programs, we assess compliance with investor protection rules, and take disciplinary action against firms or individuals who violate those rules.

For nearly 10 years, FINRA and the SEC combined efforts to address senior-related issues through the National Senior Investor Initiative. During that time, FINRA and the SEC have published joint reports, including a 2007 report addressing “Free Lunch” sales seminars, a 2008 report on compliance and supervision at firms serving seniors, and an update to that report in 2010. In 2015, FINRA and the SEC published another joint report addressing a broad range of senior-related regulatory topics—including supervision, account reviews, account documentation, the use of senior designations, customer complaints and retail communications—to facilitate a thoughtful analysis with regard to firms’ existing policies and procedures related to senior investors and whether these policies and procedures could be further refined.

We also strive to help investors—including senior investors—educate and protect themselves through a range of online tools and Investor Alerts, and more broadly through the FINRA Investor Education Foundation. The Foundation’s mission is to provide underserved Americans with the knowledge, skills and tools necessary for financial success throughout life, including in retirement years. Since its establishment in 2003, the Foundation has played a central role in FINRA’s senior investor education and outreach efforts. The Foundation employs national, state and grassroots partnerships to develop and distribute fraud prevention resources, and train consumers, law enforcement professionals and victim advocates. Since 2008, the Foundation has touched hundreds of thousands of consumers with essential fraud prevention messages, trained more than 900 law enforcement officers from over 400 agencies, distributed two public television documentaries and equipped thousands more stakeholders to fight fraud in communities nationwide. The Foundation continues to engage in research to understand the prevalence, mechanics and impact of investment fraud, whether older consumers are more heavily victimized, and behavioral and neurological risk factors that put older consumers at greater risk.
**Helpline Operations**

Since launching on April 20, the Helpline has received 2,545 calls (through December 20). The Helpline is staffed with dedicated FINRA personnel to provide personalized, outcome-oriented assistance to seniors. With an average call duration of nearly 25 minutes (and an initial wait time of less than two minutes), Helpline staff engage with callers and provide the personal attention necessary to get to the root of their questions or concerns.

The volume and variety of calls—as well as their geographic and demographic distribution—show that FINRA is helping address a significant and widespread investor need. While the average age of callers to the Helpline is 70 years old, it has received calls from individuals ranging in age from 22 to 100 years old. The Helpline has received calls from residents of all 50 states, the District of Columbia, Puerto Rico, Canada, Scotland, Vietnam, Israel, Ireland and the United Kingdom. To date, the work of the Helpline staff has resulted in firms voluntarily reimbursing individual investors nearly $750,000. Some firms have established designated points of contact to work with Helpline staff to streamline the process of resolving investor issues and have expedited their own reviews of potential misconduct by registered representatives.

**Helpline in Action**

**Fast Action**

An elderly investor’s accountant called the Helpline after finding a suspicious document among his 86-year-old client’s tax receipts. FINRA launched an investigation and discovered the client’s broker had borrowed $220,000 in 2012 and was repaying her $1,200 every month. FINRA notified the broker’s firm and within 10 days the firm terminated him. Separately, FINRA barred the broker for failure to cooperate with its investigation of his activities. The firm, previously unaware of the loan, made the client whole on the remaining balance owed and included a nominal interest amount. An effective practice that might prevent this type of incident is for firms to educate their clients to contact a supervisor or compliance officer when they have concerns or questions about the conduct of their registered representative.

**Highest number of callers by state.**
Call topics received to date cover a spectrum of financial services-related products and issues. Common products include variable annuities, mutual funds, real estate investment trusts and, most recently, energy sector securities. Issues range from how to review an investment account statement and access investor tools and resources (such as BrokerCheck®), to assistance with lost securities, to more troubling concerns of potential unsuitable recommendations, fraud, or illegal activity involving brokerage accounts and investments, as well as abuse and exploitation of seniors by persons outside of the securities industry.

Staff seeks to resolve callers’ issues as quickly as possible. Achieving a resolution frequently requires follow-up with the caller for additional information and, at times, documentation. In October and November, Helpline staff conducted more than 2,000 follow-up calls with investors, firms and third parties to pursue and resolve investor inquiries. When our initial assessment suggests serious misconduct by a securities industry professional, FINRA opens an investigation. FINRA also refers to federal and state agencies those matters that fall outside its jurisdiction—and has made over 75 such referrals to date. Separately, FINRA has made 50 referrals to Adult Protective Services (APS) in those instances where staff observed indications of abuse or exploitation. For other non-investment questions, staff frequently refers callers to AARP.

Lessons for Investors

In addition to directly helping individual seniors, FINRA analyzes Helpline call data to identify patterns or trends that inform our regulatory outreach and programs. For example, over the first two months of the Helpline’s operation, FINRA received over 20 calls on transfer on death (TOD) accounts.® FINRA recognized the challenges that investors and their families were having with these accounts and rapidly issued an Investor Alert, “Plan for Transition: What You Should Know About the Transfer of Brokerage Account Assets on Death.” In it, FINRA offers practical advice for advance preparations to facilitate the transfer of assets to heirs. The Alert also provides information regarding the effect that account ownership structures have on estate transitions, tips for determining the appropriateness of TOD accounts, information for heirs and beneficiaries including possible required documentation, means of addressing estate transfer problems and other helpful information. Firms are encouraged to take opportunities to discuss various account features like TOD with clients to help them facilitate quicker estate transfers of assets.

Helpline in Action

Correcting a “System Glitch”

An elderly investor called the Helpline for assistance with a trade error issue. The investor claimed she placed a trade with her registered representative, but did not receive a trade confirmation. After nearly three weeks, she called to find out what happened with the trade. The firm told her that it had not executed the trade because of a “software glitch.” The firm then executed the trade on the day of her follow-up call, but the delay resulted in an $8,000 loss for the investor. The firm initially offered her $4,000 in reimbursement. Helpline staff contacted the firm to inquire about the discrepancy in the reimbursement the firm offered. Following FINRA’s intervention, the firm provided the client with the execution price she deserved, resulting in a credit to her account of over $9,800.
Another common theme in calls to the Helpline is lottery scams. In response to this continuing concern, FINRA issued an Investor Alert, “Sorry, This One’s Not a Winner: Don’t Get Fooled by a Lottery Scam.” This Alert warns about scams where the target is told he or she can claim lottery “winnings” after pre-paying required taxes or fees. Of course, there are no “winnings,” only money the victim loses to the scam artists. FINRA warns investors to be suspicious of all requests for upfront payments with the promise of a windfall later. If contacted by one of these scam artists, investors should contact FINRA or the Federal Trade Commission (FTC). The Alert also provides links to additional resources, including lists of known scams and information from the National Center for Victims of Crime. Firms should consider sharing the latest information about scams and frauds with clients to help them protect themselves. Firms can also help protect their clients by monitoring for unusual fund transfer requests in an effort to stop transfers to these lottery fraudsters.

The Helpline has also received many calls from seniors who were convinced to invest in binary options based on promises of large profits. Often, Helpline callers report their funds were not deposited into their account and requests to have their money returned went unheeded. To make matters worse, the fraudsters will frequently try to get the senior to send more money as a “recovery fee” to return their initial investments. FINRA issued an Investor Alert, “Binary Options: These All-Or-Nothing Options Are All-Too-Often Fraudulent.” In it, FINRA warns investors that binary options trading is typically a high-risk strategy, and that binary options trading on non-U.S. company platforms is often fraudulent. Before investing in binary options, investors should exercise utmost caution and thoroughly vet the firm offering the options through the Commodity Futures Trading Commission (CFTC) (www.smartcheck.cftc.gov), SEC (www.sec.gov) or FINRA’s BrokerCheck (brokercheck.finra.org). Like the lottery scam issues, firms are encouraged to monitor for unusual client fund transfer requests and help educate their clients about binary options if they express interest in this type of investment.

Firms can help protect their clients by informing them about known scams.
Tax schemes are yet another scam frequently used to target senior investors. Seniors are among the more than 700,000 people who have reported receiving telephone calls from persons claiming to be an IRS agent since 2013. Not coincidentally, a surge in calls from IRS impersonators was reported nationally around the recent October 15 tax deadline, and this affected the Helpline too. Callers reported being contacted by individuals posing as IRS agents and demanding payment for taxes owed. In response to the surge, FINRA issued an Investor Alert, “Tools of the Fraud Trade: Phones and Emotions,” to warn investors about this scheme and provide guidance and IRS contact information. The IRS has repeatedly stated that its staff will not contact taxpayers via telephone to demand payment. Thus, investors should ignore calls from someone claiming to be an IRS investigator. Firms can help protect their clients by informing them about tax-related and other known scams.

FINRA reminds investors to use BrokerCheck to check the background of individuals who solicit their money.

Finally, FINRA reminds investors to check the background of individuals who solicit their money. FINRA’s BrokerCheck system can provide valuable information about individuals who have worked in the securities industry and alert investors to disciplinary problems. Investors should be on high alert if they are solicited by a broker or advisor who a regulator has barred from the securities industry. A bar represents the most serious sanction against a securities professional and may be indicative of a person more likely to engage in misconduct or outright fraud. FINRA has also seen instances where barred individuals resurface in another part of the financial services industry or operate without required registrations and licenses.
Effective Senior Protection Practices at Firms

The Helpline has been a source of valuable information not only for identifying common issues affecting seniors, but also for identifying effective practices that firms use to protect seniors. Here, we share effective practices that firms can implement to protect seniors based on our Helpline experience combined with observations from FINRA’s examination program.

Establish a Trusted Contact at Account Opening

Firms should consider using the account opening process to obtain the name and contact information for a trusted person the firm can contact if firm representatives have concerns regarding the personal or financial well-being of the investor. This prior authorization enables the firm to contact the trusted person on the account owner’s behalf without having to navigate potential privacy-related issues. It is important for firms to keep this information up-to-date. (See discussion below on FINRA’s related rule proposal.)

Protect Investors From Abuse by Registered Representatives Occupying a Position of Trust

Many registered representatives develop close and trusted relationships with their clients. While not a problem in and of itself, a close relationship can become problematic if a registered representative abuses the relationship to take advantage of a client. In this regard, some firms have prohibited registered representatives from serving as a power of attorney (POA), trustee or in a similar capacity for a client. Firms that have not implemented such prohibitions should consider adopting strong policies and supervisory procedures to protect clients who intend to—or do—grant POA, trusteeship of a client trust, or non-managed account discretionary control over their assets to any person associated with the firm. Effective practices include requiring registered representatives to provide written notification to, and receive approval from, their firm prior to becoming a POA or trustee for a client. If the firm chooses to approve such an arrangement, the firm should consider periodically contacting the account owner to review account activity for assurance that the broker’s actions reflect the client’s interests and wishes. Including training on these policies in annual continuing education training for registered representatives is another effective practice. Moreover, firms could require signed attestations from employees disclosing arrangements or relationships with clients that provide the employee with access to, authority over or a beneficial interest in client assets.

Helpline in Action

Broker Abusing Position of Trust

An anonymous tipster called the Helpline with allegations that a broker was taking advantage of an elderly client by using his influence to be named executor and primary beneficiary of the elderly investor’s approximately $3 million estate. Based on the tip, FINRA immediately launched an investigation and found the broker had not only violated his firm’s internal procedures by failing to disclose his role as executor of his client’s estate, but also falsified firm records to conceal his activities. FINRA took formal disciplinary action against the broker. Separately, the rightful heirs of the estate recovered a majority of estate assets through a civil court action.
Concerns also arise when a client wishes to make a broker who is not a family member a beneficiary of his or her estate. These situations may indicate a broker has exercised undue influence and guided the client to divert assets away from the rightful heirs. Firms should consider policies and procedures to help prevent such situations from occurring.

FINRA has observed situations where registered representatives have tried to circumvent firm policies by resigning as a client’s registered representative or by moving the client to another registered representative. This sort of activity is a red flag that firms should investigate. An effective practice is for firms to develop and implement procedures to detect evasions and to impose sanctions for breaches.

Firms should consider scrutinizing any arrangements that allow registered representatives to work with a related or associated trust company. A registered representative acting as a fiduciary, agent or trustee for trust company clients often has nearly unfettered access to client assets. As in situations where a registered representative has been granted the rights to act as POA for a client, unscrupulous individuals may be inclined to take advantage of their position as a fiduciary or trustee to act in their own interest, not the client’s interest. Firms should ensure that their processes for capturing information about registered representatives’ outside business activities includes involvement with trust companies.

Establish a Senior Issues Assistance Point of Contact

Some firms have established specialized groups, or appointed individuals, to focus on senior investor issues. These groups or individuals handle situations requiring specialized expertise on senior issues such as concerns about elder abuse or diminished capacity. They also are charged with contacting a client’s trusted contact, APS, regulators or law enforcement, as needed. Designated teams or individual staff members may also help guide a firm in the development of products and practices focused on senior investors.

Individual states’ elder abuse and financial exploitation reporting laws can vary greatly, for example with respect to who is required to report, the information and details to report, as well as the reporting timeframes. Firms of all sizes should establish sound procedures to ensure compliance with the reporting requirements in the states where they operate and consider whether they have sufficient expertise on individual states’ laws to rely solely on internal staff or whether they need external specialists.
Train Staff to Identify and Escalate Incipient Client Incapacity

Many firms have implemented annual training designed to help employees identify diminished capacity in clients. These trainings typically coach staff about red flags that may indicate cognitive impairment concerns and suggest ways to assist clients. Any firm with retail clients might consider having outside experts provide training for all levels of employees.

Many training programs also advise registered representatives to take notes of conversations in a firm’s contact management system and send follow-up communications to clients memorializing their conversations. This is an effective practice with all clients, but is particularly valuable when working with seniors. It fulfills two critical needs for a registered representative: immediately making visible to the client possible misunderstandings, as well as creating a written record of the agreed activity. If the client has, or develops, issues with memory loss, the written record could reduce the likelihood of subsequent disputes and help resolve those that do arise.

Some firms also seek to include additional people in meetings and calls with senior clients. Often, firms will have their registered representatives include other firm staff or supervisors in meetings or calls with clients to take notes as well as provide meeting assistance. Registered representatives may also consider inviting their elderly clients to bring a trusted individual to meetings to, for example, help the client organize documents and comprehend terminology.

Training operations and back-office staff to recognize the indicators of suspicious activity is another effective means to prevent or limit the victimization of clients with diminished capacity. Staff members armed with this knowledge can escalate concerns to management and compliance and possibly stop harm before it happens. For example, when a client at one firm asked an operations person to send money to pay taxes for her lottery “winnings,” the operations person immediately notified the client’s broker about the conversation. The broker contacted the client and was able to provide evidence that the supposed lottery organization was a scam before the funds were sent from the client’s account.

In addition, information technology (IT) employees can serve as a unique source of intelligence on potential diminished capacity issues. IT department employees frequently become aware of clients who make repeated calls for help resetting log-on credentials, and these frequent calls can be an indicator of diminished capacity. Firms should consider establishing procedures that instruct IT staff on the type of client activities that may raise concerns, as well as how these concerns should be escalated and addressed.

Helpline in Action

Barring the Broker

A caller contacted the Helpline for assistance in understanding brokerage statements that showed a precipitous drop in his account balance. The caller stated he was disabled, unable to work and had trusted his broker to recommend investments that would generate income to cover his living expenses. FINRA investigated and found that the broker had placed the investor in high-risk securities and other potentially unsuitable investments. FINRA barred the broker from the industry after he refused to cooperate with its investigation. The firm and investor are negotiating a resolution.
Terminating Client Relationships

Since launching the Helpline, we have received a number of calls from investors—including long-time clients of firms—concerned about their firm or registered representative dropping them as a client. Terminating a client relationship can raise difficult issues for both the client and the firm, and FINRA urges firms to address these situations thoughtfully on a case-by-case basis.

Situations may arise where a registered representative does not wish to do business with a client with memory loss or other cognitive issues. These investors are among the most vulnerable and precisely for that reason need quality investment advice. Seniors who are forced to leave a reputable firm may fall victim to dishonest, predatory individuals. FINRA encourages firms to counsel their clients about permissible business practices and encourage using POA or involving APS where necessary.

In addition, firms should beware of situations where a broker seeks to unilaterally terminate a client relationship. This could signal actions designed to hide unscrupulous behavior such as unsuitable recommendations or unauthorized trades. Or, the registered representative may simply wish to terminate relationships with clients that have small accounts. In any event, brokers are not in the business of losing assets, so firms are urged to implement procedures to detect whether there is a sound rationale to terminate a client relationship or whether a registered representative is operating out of self-interest. FINRA reminds firms that closing an account does not terminate responsibility for violative behavior that may have occurred.

Handling Incipient Capacity Concerns With Brokers

Firms should also consider the issue of registered representatives with diminished mental capacity, and design policies and procedures to respond appropriately. In doing so, firms should be responsive to applicable laws, including requirements under the Health Insurance Portability and Accountability Act (HIPAA) and Americans with Disabilities Act (ADA). These laws require policies addressing employees with any sort of disability to effectively safeguard medical information received and take steps to consider accommodations that will enable the employee to perform the essential functions of their job in an interactive process involving thoughtful discussion and compromise.

Firms should consider escalation procedures for situations where there is a known or suspected capacity issue involving any employee. It is important that firms include business managers, human resources and employment counsel in these situations at the earliest opportunity.
Firms have responded to issues that result from diminished mental capacity of firm registered representatives and staff in different ways. One firm added an attestation regarding diminished capacity to its annual compliance questionnaire. Other firms use their annual training programs to teach staff how to identify patterns that may be indicative of capacity issues, for example uncharacteristic errors or unexplained cancelled trades, or claims of unauthorized trades or other similar behaviors. In addition, much like training IT employees to monitor for concerns arising from client interactions, IT staff should monitor for employees who require frequent password resets or uncharacteristic technical assistance.

Another effective practice undertaken by a number of firms is to develop a plan of close observation for registered representatives under appropriate circumstances as an accommodation. Typical features of this accommodation include establishing a business relationship between two registered representatives to understand the personal and business aspects of certain client relationships. The introduction of a new registered representative can better protect both the client and the firm from the possible effects of a registered representative with diminished capacity acting alone. As these situations are sensitive, firms must approach each one carefully and individually to ensure that the rights of the impacted individual are protected while the needs of the client and firm are served.

Understanding Tax Consequences of Transferring Assets

The tax consequences of removing assets from qualified accounts can be significant, particularly for seniors. As such, registered representatives should take extra care explaining recommendations where there are possible tax consequences. Since Required Minimum Distributions (RMDs) affect seniors over 70 ½ years old with traditional retirement account assets, registered representatives need to ensure these clients are completing their RMDs as required by the IRS or the investor will incur a tax penalty. Involving a client’s tax professional (with the client’s permission) to ensure the client is aware of tax ramifications is an effective practice.

Helpline in Action

Big Tax Consequence

Helpline staff assisted a retired couple in dealing with a tax issue resulting from advice they received from their registered representative. According to the couple, after rolling a 401(k) to an IRA with their registered representative, the representative told the couple there would be no tax consequence incurred from taking an IRA distribution. The couple was surprised when they got a large tax bill the following year, in part due to the IRA distribution. Helpline staff assisted in initiating a dialogue between the couple and the firm. As a result, the firm agreed to pay part of the couple’s tax liability resulting from the registered representative’s tax advice.
Ensuring Investors’ Desired Estate Account Distribution

Account features and associated legal terms—e.g., “transfer on death,” “per stirpes”10 and “per capita”11—significantly affect estate distributions. Through these features, the account owner can dictate estate asset distribution and potentially minimize probate court time and costs. While these features may facilitate an estate transfer, outdated paperwork can result in the opposite outcome. A customer’s account paperwork at a firm is a legally binding document and generally supersedes a will or trust in distributing account assets upon death of the account owner. Beneficiaries listed on TOD paperwork are typically entitled to account assets no matter how the deceased has designated the estate distribution through a will. As a consequence, many rightful heirs of estates are surprised after an account owner dies to find the designated beneficiary on the firm’s paperwork was out of date and not reflective of the deceased’s intent.

Registered representatives should periodically initiate conversations with clients to remain abreast of changes in their clients’ lives and update paperwork accordingly, rather than simply relying on clients to update accounts after “life events” (e.g., marriage, divorce, retirement). Representatives taking a proactive approach will help their clients achieve desired asset distributions on death.

Additional FINRA Actions

FINRA is building on the success of the Helpline to enhance its senior investor protection efforts in several ways. First, we are increasing staff support for the Helpline to meet the strong demand for assistance and maintain our high service standards. Second, we will continue to launch investigations and bring disciplinary actions (or make referrals for matters outside of FINRA’s jurisdiction) in instances of potential fraud or sales practice abuse. Third, FINRA will continue to analyze Helpline calls and produce Investor Alerts as warranted. Fourth, FINRA recently proposed new regulations to strengthen protections aimed at preventing financial exploitation of seniors and other vulnerable adults. These proposals draw from FINRA’s experience with the Helpline as well as our broader regulatory programs. FINRA published FINRA Regulatory Notice 15-37: FINRA Requests Comment on Rules Relating to Financial Exploitation of Seniors and Other Vulnerable Adults on October 15, 2015, to gather feedback on proposed amendments to FINRA Rule 4512 (Customer Account Information). These amendments would require firms to make reasonable efforts to obtain a trusted contact person for customer accounts. The trusted contact person would be entitled to receive information about the customer’s account, as well as the physical or mental well-being of the account holder. FINRA is also proposing a new rule—FINRA Rule 2165
(Financial Exploitation of Specified Adults)—to permit certain firm staff to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation. The comment period on this Notice closed November 30, and FINRA is reviewing comments.

In addition to the Helpline, related publications, educational materials and regulatory proposals, FINRA recently experimented with a new, proactive approach to bringing our expertise to the investing public by staffing a kiosk in a Florida shopping mall frequented by seniors. During the two-day program, FINRA staff answered investment-related questions and provided educational materials and literature. We plan to replicate the kiosks in other parts of the country.

**Conclusion**

Through this report, we have shared some of the real-life situations and dilemmas regarding senior investors that have surfaced through the Helpline. We encourage senior investors to contact the FINRA Securities Helpline with securities-related concerns. Equally important, we trust that the information and effective practices discussed in this report will prompt firms of all sizes to assess their readiness to address the challenges that surface with some elderly clients. We hope that firms consider their size, retail client profile, product offerings, complaints or concerns raised by senior clients, the training of its workforce, and other factors in determining how to design and implement programs and controls to best serve this segment of the investing public. For its part, FINRA will continue to explore new and innovative ways to make a positive difference in the financial lives of senior investors.
Endnotes

1. While the Helpline is designed to assist older investors, FINRA does not use age to define a “senior investor.”


3. According to a release by MetLife, seniors lose at least $2.9 billion annually to financial exploitation, and 1 in 5 Americans aged 65 or older have been a victim of financial fraud.


7. See FINRA Rule 3240 (Borrowing From or Lending to Customers), that, with certain exceptions, prohibits a person associated with a member in any registered capacity from borrowing money from or lending money to any client.

8. BrokerCheck is a free tool that provides information to the public about current and former registered brokers. The information contained in BrokerCheck is collected through FINRA’s registration process from filings by regulators, firms and investment professionals. It includes current licensing status and history, employment history and, if any, reported regulatory, customer dispute, criminal and other matters. Visit http://brokercheck.finra.org/ for more information and to conduct searches.

9. “Transfer on Death” is a feature in which a non-retirement account owner can designate beneficiaries, whereupon the account owner’s death, assets may avoid probate and transfer directly to listed beneficiaries on the TOD documents.

10. “Per stirpes” is a legal term used in conjunction with beneficiary designations to direct assets to the heirs of the primary beneficiaries if the primary beneficiary predeceases the account owner.

11. “Per capita” is a legal term used in conjunction with beneficiary designations to direct assets equally to surviving primary beneficiaries when one of the primary beneficiaries predeceases the account owner.