



## 2019 FINRA Senior Investor Protection Conference

November 12 | Washington, DC

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### **Legal and Regulatory Update** **Tuesday, November 12, 2019** **3:30 p.m. – 4:30 p.m.**

Panelists explore the evolving regulatory structure surrounding senior investor protections and the challenges facing regulators and financial services professionals when developing an effective, efficient and integrated protection framework.

**Moderator:** Sarah Gill  
Director State Relations, Office of Government Affairs  
FINRA Office of Government Affairs

**Speakers:** Joseph Brady  
Executive Director  
North American Securities Administrators Association (NASAA)

Lourdes Gonzalez  
Assistant Chief Counsel - Sales Practice, Division of Trading and Markets  
U.S. Securities and Exchange Commission (SEC)

Erin Linehan  
Associate General Counsel – Compliance  
Raymond James Financial, Inc.

James Wrona  
Vice President and Associate General Counsel, Regulatory  
FINRA Office of General Counsel

## Legal and Regulatory Update Panelist Bios:

### Moderator:

**Sarah Gill** is Director of State Relations in the Office of Government Affairs at FINRA. In this role, she addresses policy matters and coordinates with the North American Securities Administrators Association and state securities regulators. Before joining FINRA in 2018, Ms. Gill was a Senior Vice President at LPL Financial, with roles including Head of Regulatory Policy and Associate General Counsel. She provided strategic advice on policy initiatives and advocated for the firm's positions on rule proposals and other policy matters. She also provided legal advice on regulatory issues, such as senior investor protection. Prior to joining LPL, Ms. Gill was an Assistant General Counsel in FINRA's Office of General Counsel, a Counsel at WilmerHale, and a law clerk for the Honorable Ricardo M. Urbina, U.S. District Judge for the District of Columbia. Ms. Gill began her legal career as an officer in the U.S. Navy J.A.G. Corps, with assignments as a military prosecutor in Pearl Harbor, legal advisor to the NCIS Hawaii Field Office, and a Special Assistant U.S. Attorney at the U.S. Attorney's Office in Honolulu. She obtained her law degree from the UCLA School of Law and her B.A. from the University of Pennsylvania.

### Speakers:

**Joseph Brady** joined the North American Securities Administrators Association, Inc. ("NASAA") in 2005 as associate counsel. In 2011, he was appointed General Counsel and in May 2015 was named as NASAA's Executive Director. NASAA is the association of state, provincial, and territorial securities regulators in the United States, Canada, and Mexico. NASAA and its members are committed to protecting investors from fraud and abuse in securities transactions, and their activities focus on licensing, enforcement, and investor education. As Executive Director, Mr. Brady is responsible for oversight of NASAA's century-old mission of investor protection across North America. During his time at NASAA, Mr. Brady's responsibilities have included serving as deputy to NASAA's representative on the Financial Stability Oversight Council and supporting the work of various committees including the NASAA Broker-Dealer and Investment Adviser Section Committees. He has led several initiatives undertaken by NASAA including the development of the NASAA Electronic Filing Depository for Regulation D, Rule 506 filings and the implementation of provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act governing the regulation of investment advisers. Prior to joining NASAA, Mr. Brady served as chief counsel to the Securities Division of the Mississippi Secretary of State. In this role he managed enforcement cases brought by the division and represented the Secretary of State in matters before state courts and administrative tribunals. Mr. Brady is admitted to the bars of Mississippi (inactive) and the District of Columbia and is a graduate of the Mississippi College School of Law and the University of Southern Mississippi.

**Lourdes Gonzalez** is Assistant Chief Counsel for Sales Practices in the Division of Trading and Markets at the U.S. Securities and Exchange Commission. The Office of Chief Counsel has program responsibility for a broad range of broker-dealer issues, including broker-dealer registration, sales practices, supervision, securities arbitration, and anti-money laundering compliance. She is a frequent speaker on these topics, and has represented the Commission both nationally and internationally. In addition, Ms. Gonzalez is the Commission's representative to the Bank Secrecy Act Advisory Group and she oversees the Commission staff's participation in the Financial Action Task Force. Prior to joining the Commission, Ms. Gonzalez worked at the U.S. Department of the Treasury. She earned her law degree from George Washington University and her undergraduate degree from Georgetown University.

**Erin Linehan** is responsible for four areas within the enterprise-wide compliance function: Dispute Resolution, Senior & At-Risk Clients; Marketing & Strategy Compliance and Corporate Functions Compliance. Aside from handling substantive work for these critical areas of the firm, these teams provide compliance and legal advice and guidance to the enterprise, metrics, data and trending that is essential for the firm to manage risk and make risk-based escalation decisions to senior management, while also providing education on best practices and trends to financial advisors so they may benefit from lessons learned. Ms. Linehan is involved in creating and developing policies and procedures in her areas of expertise for the firm at large. She is a frequent speaker at company and industry events, domestically and abroad, on lessons learned and best practices for financial advisors, supervisors, attorneys and compliance professionals. Ms. Linehan received her B.S. from Cornell University and JD, *cum laude* from

Tulane Law School with a specialization in European Legal Studies. She has her Series 7, 9 and 10 licenses, is a FINRA Arbitrator, a member of SIFMA's Senior Investor Working Group, FINRA's Senior Investor Roundtable, FINRA's CIC, and is on the Board of Governors for the Florida Securities Dealers Association. In 2016, Ms. Linehan founded and currently co-leads an organization of more than 100 women lawyers in the Southeast U.S. who practice in the financial services industry. Southeast Women in Financial Services is focused on networking, professional development, the advancement of women in financial services and philanthropic efforts to support financial education, professional development and economic security for women through community partnerships, education and advocacy. Ms. Linehan also sits on the Board of Directors for Pace Center for Girls, Inc. - Hillsborough.

**James S. Wrona** is Vice President and Associate General Counsel for FINRA in Washington, DC. In this role, he is responsible for various policy initiatives, rule changes and litigation regarding the securities industry. Mr. Wrona formerly was associated with the law firm of K&L Gates LLP, where his practice focused on complex federal litigation. He also previously served as a federal law clerk for the Honorable A. Andrew Hauk of the United States District Court for the Central District of California (Los Angeles). Mr. Wrona is a frequent speaker at securities and litigation conferences and author of numerous law review articles, including *The Best of Both Worlds: A Fact-Based Analysis of the Legal Obligations of Investment Advisers and Broker-Dealers and a Framework for Enhanced Investor Protection*, 68 Bus. Law. 1 (Nov. 2012); *The Securities Industry and the Internet: A Suitable Match?*, 2001 Colum. Bus. L. Rev. 601 (2001).



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## Legal and Regulatory Update



# Panelists


## ■ Moderator

- Sarah Gill, Director State Relations, Office of Government Affairs, FINRA Office of Government Affairs

## ■ Panelists

- Joseph Brady, Executive Director, North American Securities Administrators Association (NASAA)
- Lourdes Gonzalez, Assistant Chief Counsel – Sales Practice, Division of Trading and Markets, U.S. Securities and Exchange Commission (SEC)
- Erin Linehan, Associate General Counsel – Compliance, Raymond James Financial, Inc.
- James Wrona, Vice President and Associate General Counsel, Regulatory, FINRA Office of General Counsel

# To Access Polling

- Under the “Schedule” icon on the home screen,
- Select the day,
- Choose the Legal and Regulatory Update session,
- Click on the polling icon: 

# Polling Question 1

- 1. FINRA's Rule 4512 trusted contact person requirement:**
  - a. Applies only to customers age 65 and over**
  - b. Permits the trusted contact person to transact in the account**
  - c. None of the above**

# FINRA Senior Investor Rules

## ■ FINRA Rule 4512 (Customer Account Information)

- Requires member firms to make reasonable efforts to obtain a trusted contact person upon the opening of a non-institutional customer's account or when updating account information.

## ■ FINRA Rule 2165 (Financial Exploitation of Specified Adults)

- Permits temporary holds on disbursements in situations involving a reasonable belief of financial exploitation of a “specified adult” customer.
- Specified adults include a person age 65+ or a person age 18+ who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his/her interests.



## Polling Question 2

- 2. If an 80 year old client with limited funds requests a \$100,000 disbursement to help her caregiver purchase a new home, her financial advisor should:**
- a. Disburse the funds promptly**
  - b. Refuse to disburse the funds**
  - c. Escalate and seek guidance**

# Suspicious Activity Reports

CONSUMER FINANCIAL PROTECTION BUREAU | FEBRUARY 2019

## Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends

Office of Financial Protection for Older Americans



# NASAA Model Act

ServeOurSeniors.org

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## NASAA MODEL LEGISLATION OR REGULATION TO PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Adopted January 22, 2019

### Prefatory note:

Jurisdictions considering this model legislation or regulation, whether through legislative council or subcommittee, may need to consider certain small changes to terms, particularly with regard to certain designated terms. For example, this model refers to the "commissioner of securities" or "state securities commissioner." But in certain jurisdictions, that position may be held by a director of securities, or commissioner of banking and securities, or commissioner of corporations. Furthermore, this model refers to Adult Protective Services, but certain jurisdictions may require a more specific reference to the agency by exact name. Finally, with regard to Section 3 (Definitions), certain jurisdictions may use different defined terms (e.g., subsequent instead of broker-dealer agents), therefore, Section 2 may require certain slight changes to the definitions to align with existing securities statutes.

### *Act to Protect Vulnerable Adults From Financial Exploitation.*

**Section 1. Short title.** Sections \_\_\_\_\_ may be cited as "the Act to Protect Vulnerable Adults From Financial Exploitation" and fit this chapter as this act.

**Section 2. Definitions.** In this act, unless the context otherwise requires:

(1) "Agent" shall have the same meaning as in [insert state code section];

(2) "Broker-dealer" shall have the same meaning as in [insert state code section];

(3) "Eligible adult" means:

- (a) a person sixty-five years of age or older; or
- (b) a person subject to [insert state Adult Protective Services statute];

(4) "Financial exploitation" means:

- (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or
- (b) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:
  - 1. Obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or

## NASAA Model Act to Protect Vulnerable Adults From Financial Exploitation Update Center

The following jurisdictions have enacted legislation or regulations based on the [NASAA Model Act to Protect Vulnerable Adults From Financial Exploitation](#). Click on the jurisdiction's name to view information about the enacted laws or regulations. The year of passage is indicated. This page will be updated as new legislation or regulation based on the [NASAA Model Act to Protect Vulnerable Adults From Financial Exploitation](#) is enacted.

- Alabama [Act 2016-141](#) (2016)
- Alaska [HB 170](#) (2018)
- Arizona [SB 1483](#) (2019)
- Arkansas [Act 668](#) (2017)
- Colorado [HB 17-1253](#) (2017)
- Delaware [HB 332](#) (2018)

# Senior Safe Act



## SENIOR SAFE ACT FACT SHEET

May 23, 2019

### Introduction

The Senior Safe Act became federal law on May 24, 2018.<sup>1</sup> The Senior Safe Act does not mandate any action by financial institutions and regulators. However, for financial institutions and certain eligible employees (discussed below), affiliated persons, and associated persons ("eligible employees"), who satisfy its requirements, the Senior Safe Act provides immunity from liability in any civil or administrative proceeding for reporting potential exploitation of a senior citizen. As an example, this immunity can be helpful when a firm wants to report potential exploitation but fears that the report could violate a privacy requirement. This Fact Sheet provides general information regarding the Senior Safe Act with the goal of educating financial institutions and employees about the benefits of the Act.<sup>2</sup>

### What is the Senior Safe Act?

The Senior Safe Act protects "covered financial institutions"<sup>3</sup> – which include investment advisers, broker-dealers, and transfer agents – and their eligible employees, from liability in any civil or administrative proceeding in instances where those employees make a report about the potential exploitation of a senior citizen (defined as not younger than 65 years) to a covered agency.<sup>4</sup> The

# FINRA's Retrospective Review

## Regulatory Notice

19-27

### Retrospective Rule Review

FINRA Requests Comment on Rules and Issues  
Relating to Senior Investors

August 9, 2019

Notice Type

► Request for Comment

## **Polling Question 3**

- 3. Which topic would you like the panel to discuss?**
- a. Extending the Rule 2165 safe harbor to cover temporary holds on transactions**
  - b. Extending the time period for temporary holds**
  - c. Adding a safe harbor for temporary holds placed due to concerns about a customer's impairment**
  - d. Whom to contact if there is no trusted contact person**

# Transaction Holds



# Time Period for Disbursement Holds





# Disbursement Holds due to a Customer's Impairment



# Trusted Contact Person





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**Resources**

**FINRA Notices**

- FINRA *Regulatory Notice 19-27, Retrospective Rule Review, FINRA Requests Comment on Rules and Issues Relating to Senior Investors* (August 2019)  
[www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-27.pdf](http://www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-27.pdf)
- FINRA *Regulatory Notice 17-11, Financial Exploitation of Seniors, SEC Approves Rules Relating to Financial Exploitation of Seniors* (March 2017)  
[www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf](http://www.finra.org/sites/default/files/Regulatory-Notice-17-11.pdf)

**FINRA Senior Helpline**

- FINRA Securities Helpline for Seniors: 844-57-HELPS (844-574-3577)
- Report on the FINRA Securities Helpline for Seniors (December 2015)  
[www.finra.org/media-center/news-releases/2015/finra-releases-report-its-securities-helpline-seniors](http://www.finra.org/media-center/news-releases/2015/finra-releases-report-its-securities-helpline-seniors)
- FINRA Securities Helpline for Seniors webpage  
[www.finra.org/investors/have-problem/helpline-seniors](http://www.finra.org/investors/have-problem/helpline-seniors)

**FINRA Other Resources**

- FINRA Senior Investors Webpage  
[www.finra.org/rules-guidance/key-topics/senior-investors](http://www.finra.org/rules-guidance/key-topics/senior-investors)
- NASAA-SEC-FINRA Senior Safe Act Fact Sheet (May 23, 2019)  
[www.finra.org/sites/default/files/2019-05/senior\\_safe\\_act\\_factsheet.pdf](http://www.finra.org/sites/default/files/2019-05/senior_safe_act_factsheet.pdf)
- Protecting Seniors From Financial Exploitation (April 25, 2018)  
[www.finra.org/investors/insights/senior-financial-exploitation](http://www.finra.org/investors/insights/senior-financial-exploitation)
- FINRA Investor Alerts  
[www.finra.org/investors/alerts](http://www.finra.org/investors/alerts)

- Fighting Fraud 101 brochures

<https://tools.finra.org/portal/sai-portal>

## Securities and Exchange Commission Resources

- SEC Office of the Investor Advocate, How the SEC Works to Protect Senior Investors (May 2019)

[www.sec.gov/files/how-the-sec-works-to-protect-senior-investors.pdf](http://www.sec.gov/files/how-the-sec-works-to-protect-senior-investors.pdf)

- SEC Division of Investment Management, Response of the Chief Counsel's Office to the Investment Company Institute (June 1, 2018)

[www.sec.gov/divisions/investment/noaction/2018/investment-company-institute-060118-22e.htm](http://www.sec.gov/divisions/investment/noaction/2018/investment-company-institute-060118-22e.htm)

- Investor Alert – Red flags to help identify elder abuse

[www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-help-adult-protective-services](http://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-help-adult-protective-services)

- Investor Alert – Red Flags of Fraud

[www.investor.gov/additional-resources/news-alerts/alerts-bulletins/updated-investor-alert-seniors-five-red-flags](http://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/updated-investor-alert-seniors-five-red-flags)

- Investor Alert – How to Avoid Fraud

[www.investor.gov/protect-your-investments/fraud/how-avoid-fraud](http://www.investor.gov/protect-your-investments/fraud/how-avoid-fraud)

- Investor Alert – Promotion or Ad asking for your email address and phone number

[www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-dont-invite-investment-scams](http://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-dont-invite-investment-scams)

- Investor Alert – Ponzi Schemes Targeting Seniors

[www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-ponzi-schemes-targeting-seniors](http://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-ponzi-schemes-targeting-seniors)

- Guide for Seniors: Protect Yourself Against Investment Fraud (brochure):

[www.investor.gov/additional-resources/general-resources/publications-research/publications/guide-seniors-protect](http://www.investor.gov/additional-resources/general-resources/publications-research/publications/guide-seniors-protect)

- Stopping Affinity Fraud in Your Community (brochure)

[www.investor.gov/additional-resources/general-resources/publications-research/publications/stopping-affinity-fraud](http://www.investor.gov/additional-resources/general-resources/publications-research/publications/stopping-affinity-fraud)

- Investor Bulletin – Planning for Diminished Capacity

[www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-consumer-advisory-planning](http://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-consumer-advisory-planning)

- Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults  
[www.sec.gov/news/press/2013/elder-abuse-guidance.pdf](http://www.sec.gov/news/press/2013/elder-abuse-guidance.pdf)
- Enforcement Action: SEC Charges Texas Radio Host “The Money Doctor,” Halts Ponzi Scheme Targeting Elderly Investors  
[www.sec.gov/litigation/litreleases/2019/lr24420.htm](http://www.sec.gov/litigation/litreleases/2019/lr24420.htm)

#### **North American Securities Administrators Association Resources**

- Serve Our Seniors website  
<http://serveourseniors.org>
- NASAA Guide for Developing Practices and Procedures for Protecting Senior Investors and Vulnerable Adults from Financial Exploitation (September 2016)  
<http://serveourseniors.org/wp-content/uploads/2016/09/NASAA-Guide-For-Developing-Practices-and-Procedures-For-Protecting-Senior-Investors-and-Vulnerable-Adults-From-Financial-Exploitation.pdf>
- NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation  
<http://serveourseniors.org/about/policy-makers/nasaa-model-act/>

#### **Financial Crimes Enforcement Network Resources**

- Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation (August 2017)  
[www.fincen.gov/sites/default/files/2017-08/8-25-2017\\_FINAL\\_CFPB%2BTreasury%2BFinCEN%20Joint%20Memo.pdf](http://www.fincen.gov/sites/default/files/2017-08/8-25-2017_FINAL_CFPB%2BTreasury%2BFinCEN%20Joint%20Memo.pdf)
- Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation (February 2011)  
[www.fincen.gov/sites/default/files/advisory/fin-2011-a003.pdf](http://www.fincen.gov/sites/default/files/advisory/fin-2011-a003.pdf)
- FinCEN Advisory Warns of Elder Financial Exploitation (February 2011)  
[www.fincen.gov/news/news-releases/fincen-advisory-warns-elder-financial-exploitation](http://www.fincen.gov/news/news-releases/fincen-advisory-warns-elder-financial-exploitation)

#### **Consumer Financial Protection Bureau Resources**

- Reporting of Suspected Elder Financial Exploitation by Financial Institutions (July 2019)  
[www.consumerfinance.gov/data-research/research-reports/reporting-suspected-elder-financial-exploitation-financial-institutions-update-2016-advisory-and-recommendations/](http://www.consumerfinance.gov/data-research/research-reports/reporting-suspected-elder-financial-exploitation-financial-institutions-update-2016-advisory-and-recommendations/)
- Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends (February 2019)  
[www.consumerfinance.gov/data-research/research-reports/suspicious-activity-reports-elder-financial-exploitation-issues-and-trends/](http://www.consumerfinance.gov/data-research/research-reports/suspicious-activity-reports-elder-financial-exploitation-issues-and-trends/)

- Recommendations and report for financial institutions on preventing and responding to elder financial exploitation (March 2016)

[www.consumerfinance.gov/data-research/research-reports/recommendations-and-report-financial-institutions-preventing-and-responding-elder-financial-exploitation/](http://www.consumerfinance.gov/data-research/research-reports/recommendations-and-report-financial-institutions-preventing-and-responding-elder-financial-exploitation/)