



# 2022 Annual Conference

May 16 –18 | Washington, DC | Hybrid Event

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## Senior and At-Risk Investors

**Monday, May 16, 2022**

**11:15 a.m. – 12:15 p.m.**

Join FINRA staff and industry practitioners as they discuss legal and regulatory tools and effective practices to assist firms and financial professionals in serving and protecting senior and other at-risk investors.

**Moderator:** Jeanette Wingler  
Associate General Counsel, Regulatory  
FINRA Office of General Counsel

**Panelists:** Brooke Hickman  
Director, Vulnerable Adults & Seniors Team  
FINRA Member Supervision

Thomas Mierswa  
Executive Director  
Morgan Stanley

Joel Sauer, CFA  
Director of Senior and Vulnerable Investor Investigations  
Charles Schwab & Co., Inc.

Jennifer Szaro, CRCP®  
Chief Compliance Officer  
XML Securities, LLC

## Senior and At-Risk Investors Panelists Bios:

Moderator:



**Jeanette Wingler** is Associate General Counsel in FINRA's Office of the General Counsel. Ms. Wingler's responsibilities involve a variety of regulatory areas, including research analyst conflicts, cybersecurity, seniors and other vulnerable investors and recruitment practices. Prior to joining FINRA in 2014, Ms. Wingler was an associate at Dechert LLP, where she advised on regulatory and compliance matters for broker-dealers, investment advisers and investment companies. Ms. Wingler graduated from the University of North Carolina at Chapel Hill with a bachelor's degree in political science and history. She has a law degree from Duke University School of Law.

Panelists:



**Brooke Hickman** is Director of FINRA's Vulnerable Adults and Seniors Team ("VAST"). The mission of the Vulnerable Adults & Seniors Team is to deter, detect, and investigate the financial exploitation and abuse of seniors and vulnerable adults. Prior to joining VAST, Mrs. Hickman was a Cycle Examiner with FINRA's Member Regulation Department in the Boca Raton District Office. Before coming to FINRA, she worked in the industry as a Financial Advisor and then in Operations at a large mutual fund company. Mrs. Hickman has undergraduate and graduate degrees in International Business.



**Tom Mierswa**, is Executive Director in the Branch Advisory Group of the Legal and Compliance Division of Morgan Stanley. He started his career on Wall Street as a senior litigation counsel, later turning to retail advisory law, which is his practice today. A graduate of Williams College and American University's Washington College of Law, before joining Wall Street, Mr. Mierswa clerked on the District of Columbia Court of Appeals and served as an Assistant District Attorney and Senior Investigative Counsel in the New York County District Attorney's Office under Robert M. Morgenthau. He has been an adjunct professor of law at Fordham University Law School, sits periodically as a FINRA arbitrator, is an active member of SIFMA's Senior

Investor's Working Group and frequently presents on industry issues arising from the handling of accounts of senior investors.



**Joel Sauer** joined Charles Schwab as the Director of Senior and Vulnerable Investor (SVI) Investigations in 2019. He began his financial services career as an Investigator and Assistant Director in Inspections and Compliance at the Texas State Securities Board. He then served as an Examiner and Examinations Branch Chief in the Fort Worth Regional Office of the U.S. Securities and Exchange Commission. Prior to joining Schwab, he was the Chief Compliance Officer for hedge fund manager Hayman Capital Management and then for private equity firm Lone Star Funds.



**Jennifer Szaro** is Chief Compliance Officer for XML Securities, LLC a fully disclosed introducing broker/dealer and its affiliated investment advisory firm, XML Financial Group. Ms. Szaro is responsible for managing both firms' compliance infrastructures. Ms. Szaro joined the securities industry in 2000. She previously worked in the technology sector where she had experience in ecommerce, website hosting and product development. As the securities industry went through significant changes with higher regulatory demands, she took on more compliance and marketing related roles. In 2011, she became a senior level executive and Chief Compliance Officer of the broker dealer, then dually registered. In addition to her

current role as CCO, she is the AMLCO, and alternative FINOP. In 2012, she completed FINRA's Certified Regulatory and Compliance Professional Program (CRCP)<sup>®</sup>. In 2018, she became a non-public FINRA Dispute Resolution Arbitrator, having qualified through the National Arbitration and Mediation Committee. In 2019, she was appointed to serve out a two-year term on the FINRA's Small Firm Advisory Committee

(SFAC), serving as the 2020 Chair. She was re-appointed to serve a three-year term through 2023. Ms. Szaro holds the following FINRA registrations; Compliance Officer (CR), Introducing Broker-Dealer Financial and Operations Principal (FI), General Securities Principal (GP), General Securities Representative (GS), Investment Company and Variable Contracts Products Representative (IR), Municipal Securities Principal (MP), Municipal Securities Representative (MR), and Operations Professional (OS). Ms. Szaro is a graduate from the University of Rhode Island with a Bachelor of Science.

## Senior and At-Risk Investors

# Panelists

## ○ Moderator

- Jeanette Wingler, Associate General Counsel, Regulatory, FINRA Office of General Counsel

## ○ Panelists

- Brooke Hickman, Director, Vulnerable Adults & Seniors Team, FINRA Member Supervision
- Thomas Mierswa, Executive Director, Morgan Stanley
- Joel Sauer, CFA, Director of Senior and Vulnerable Investor Investigations, Charles Schwab & Co., Inc.
- Jennifer Szaro, CRCP<sup>®</sup>, Chief Compliance Officer, XML Securities, LLC

# Agenda

- | FINRA Tools to Aid Customers and Firms
- | Meeting Mr. Wrong, the Case of the Online Boyfriend
- | The Case of the Forgotten Password
- | The Case of the Would-Be Beneficiary
- | Q&A
- | Resources

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# FINRA Tools to Aid Customers and Firms

# FINRA Tools to Aid Customers and Firms

- **FINRA's Securities Helpline for Seniors® (1-844-57-HELPS)**
  - Launched in 2015
  - Free resource that senior investors can call to get assistance from FINRA or raise concerns about issues with brokerage accounts and investments.
  - Received over 4,000 calls since January 2021



# Trusted Contact Person

- FINRA Rule 4512 (Customer Account Information) requires firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account.
- Requires disclosure in writing to the customer that the firm or 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 Rule 2165.
- Firms may open and maintain an account if a customer fails to identify a trusted contact person.

# FINRA Rule 2165 (Financial Exploitation of Eligible Adults)

- Rule 2165 permits firms to place a temporary hold on a securities transaction or disbursement of funds or securities from the account of a “specified adult” (*i.e.*, a person 65 and older or a person 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) where there is a reasonable belief of financial exploitation of that customer.
- Rule 2165 provides a safe harbor under FINRA rules when a firm uses its discretion to place a temporary hold consistent with the requirements of the rule.
- A temporary hold may be placed on a particular suspicious transactions or disbursements but not on other non-suspicious transactions or disbursements.

# FINRA Rule 2165 (Financial Exploitation of Eligible Adults)

- Unless a firm reasonably believes that doing so would cause further harm to a specified adult, FINRA encourages the firm to attempt to resolve a matter with a customer before placing a temporary hold.
- Temporary hold would expire not later than 15 business days.
- Provided that the firm's internal review of the facts and circumstances supports its reasonable belief of financial exploitation, Rule 2165 permits the firm to extend the temporary hold for:
  - An additional 10 business days; and
  - An additional 30 business days if the firm has reported the matter to a state regulator or agency or a court of competent jurisdiction (up to 55 business days total).
- A temporary hold may also be terminated or extended by a state regulator or agency or court of competent jurisdiction.

# FINRA Rule 2165 (Financial Exploitation of Eligible Adults)

- Rule 2165 also includes important safeguards that apply equally to holds on disbursements and transactions that are designed to ensure that there is not a misapplication of the rule, including:
  - notification of the hold and rationale to all parties authorized to transact business on the account (including the customer) and the trusted contact person within two business days;
  - establishing and maintaining written supervisory procedures reasonably designed to achieve compliance with the specific requirements of the rule, including procedures related to the identification, escalation and reporting of matters related to the financial exploitation of specified adults;
  - escalating any hold request to a supervisor, compliance department or legal department rather than allowing an associated person handling an account to independently place a hold;
  - developing and documenting training policies or programs for associated persons; and
  - retaining records related to compliance with the rule, which shall be readily available to FINRA, upon request.

# FINRA Rule 3241

- FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer) protects investors by requiring firms to affirmatively address registered persons being named beneficiaries or holding positions of trusts for customers. Rule 3241 does not apply where the customer is a member of the registered person's "immediate family."
- The rule defines "customer" to include any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member firm.
- The rule requires the firm with which the registered person is associated, upon receiving required written notice from the registered person, to review and approve or disapprove the registered person assuming such status or acting in such capacity.
- A registered person being named as a beneficiary or to a position of trust without his or her knowledge would not violate the rule; however, the registered person must act consistent with the rule upon learning that he or she was named as a beneficiary or to a position of trust.

# 2 | Meeting Mr. Wrong, the Case of the Online Boyfriend

# Meeting Mr. Wrong, the Case of the Online Boyfriend

Bob's client Susan is a fun-loving, senior divorcée. Susan calls Bob filled with excitement about meeting Sam. Susan is thrilled that Sam shares her love of travel, but there is one catch. Sam is short on funds to book his travel to Mexico for their joint beach vacation. Susan informs Bob that she wants to sell \$10,000 in investments to pay for the vacation with Sam.

What questions should Bob ask Susan?

# Meeting Mr. Wrong, the Case of the Online Boyfriend

Susan tells Bob that Sam is currently staying with his family in another state, so they have not met in person. Susan believes this beach vacation is an important step in their relationship and that Sam will pay her back once they are in Mexico. Bob is concerned that Susan is being scammed.

What steps should Bob take?



# 3

## The Case of the Forgotten Password

# The Case of the Forgotten Password

Pam's client Bill is a retired professor. Pam receives a call from Bill asking for help after he was locked out of his account after several failed password attempts. Pam and Bill had a pleasant chat and Pam helped Bill regain access to his online account.

A few days later Pam receives another call from Bill asking for help after he was again locked out of his account after several failed password attempts. Bill does not seem to remember their prior call.

What steps should Pam consider taking?

# The Case of the Forgotten Password

Over the next few months, Pam notices that Bill is increasingly confused when they speak, and his appearance has become disheveled. Bill has trouble discussing his investments or expenses.

What steps should Pam consider taking?

How might this situation have been different if Bill did not work directly with Pam and instead used the firm's call center?

# 4

## The Case of the Would-Be Beneficiary

# The Case of the Would-Be Beneficiary

Beth supervises Dan, a recently hired RR. Dan has been meeting with his client Angela to discuss her estate planning needs. Angela has substantial assets and a strained relationship with her adult children. During their discussions, Angela told Dan that she wants to leave him a bequest as a thank you for his help. Dan is not sure what to do and asks Beth for help.

How should Beth advise Dan?

What information should the firm consider in assessing the arrangement?

# The Case of the Would-Be Beneficiary

After speaking with Dan and Angela, Beth does not believe that Dan has acted improperly in seeking to become Angela's beneficiary. However, Angela has told her adult children about her estate plan and the children have expressed concern to Dan and the firm about the bequest.

How may the involvement of Angela's children factor into the firm's assessment of the arrangement?

Assume instead that, after speaking with Dan and Angela, Beth believes that Angela was improperly pressured into naming Dan as her beneficiary. How should the firm address the conduct?

# Senior and At-Risk Investors



# Resources

## FINRA Materials

- [FINRA Senior Helpline](#)
- [Protecting Senior Investors 2015-2020 Report](#)
- [FINRA Regulatory Notice 20-34](#)
- [FINRA Regulatory Notice 20-38](#)
- [FINRA Regulatory Notice 22-05](#)
- Virtual Panel: [Communication Between APS and Professional Reporters of Financial Exploitation](#)
- Podcast: [AML and Elder Exploitation](#)
- [FINRA Investor Education Foundation – Aging and Financial Decision Making Research Studies](#)
- [FINRA Investor Education Foundation – Exposed to Scams, What Separates Victims from Non-Victims](#)

## Joint SEC, FINRA and NASAA Materials

- [Training for the Securities Industry: Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors](#)
- [Trusted Contact Video](#)
- [Trusted Contact Fact Sheet](#)



# Resources

## ○ Self-Reported Reasons for Customers Engaging with a Scam:

- “They seemed official.”
- “I was under time pressure.”
- “I thought the person was nice.”
- “I worried about missing out on an opportunity.”
- “They seemed to know personal details about me.”
- “I felt intimidated.”
- “I had an opportunity to get ahead financially.”
- “I deserved to be rewarded.”
- “I had an opportunity to make good on past mistakes.”
- “I wanted to please the person I was dealing with.”
- “I felt afraid of being punished.”

Source:

[FINRA Investor Education Foundation – Exposed to Scams, What Separates Victims from Non-Victims](#)

# Resources

## Non-FINRA Resources

- [AARP Fraud Watch Network Helpline \(877-908-3360\)](#)
- [AARP BankSafe Initiative](#) and [Training Platform](#)
- [US Department of Justice National Elder Fraud Hotline \(833-372-8311\)](#)

## State Reporting Resources

- [National Center on Elder Abuse: State Resources and Reporting Directory](#)
- [HelpVul Unified Reporting Portal](#)
- [50 State Survey of Senior and Vulnerable Adult Investor Laws](#)



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## Senior and At-Risk Investors

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### Resources:

#### FINRA Resources:

- FINRA Securities Helpline for Seniors  
[www.finra.org/investors/have-problem/helpline-seniors](http://www.finra.org/investors/have-problem/helpline-seniors)
- Protecting Senior Investors 2015-2020 Report  
[www.finra.org/rules-guidance/key-topics/senior-investors/protecting-senior-investors-2015-2020](http://www.finra.org/rules-guidance/key-topics/senior-investors/protecting-senior-investors-2015-2020)
- FINRA Regulatory Notice 22-05, *FINRA Adopts Amendments to FINRA Rule 2165* (February 2022)  
[www.finra.org/rules-guidance/notices/22-05](http://www.finra.org/rules-guidance/notices/22-05)
- FINRA Regulatory Notice 20-38, *FINRA Adopts Rule to Limit a Registered Person From Being Named a Customer's Beneficiary or Holding a Position of Trust for or on Behalf of a Customer* (October 2020)  
[www.finra.org/rules-guidance/notices/20-38](http://www.finra.org/rules-guidance/notices/20-38)
- FINRA Regulatory Notice 20-34, *Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report* (October 2020)  
[www.finra.org/rules-guidance/notices/20-34](http://www.finra.org/rules-guidance/notices/20-34)
- FINRA Virtual Panel: Communication Between APS and Professional Reporters of Financial Exploitation  
[www.finra.org/events-training/virtual-conference-panels/communication-between-adult-protective-services-aps-and-professional](http://www.finra.org/events-training/virtual-conference-panels/communication-between-adult-protective-services-aps-and-professional)
- FINRA Podcast: Anti-Money Laundering and Elder Exploitation  
[www.finra.org/media-center/finra-unscripted/aml-elder-financial-exploitation](http://www.finra.org/media-center/finra-unscripted/aml-elder-financial-exploitation)
- FINRA Investor Education Foundation - Aging and Financial Decision Making Research Studies  
[www.finrafoundation.org/knowledge-we-gain-share/aging-and-financial-decision-making](http://www.finrafoundation.org/knowledge-we-gain-share/aging-and-financial-decision-making)
- FINRA Investor Education Foundation - Exposed to Scams, What Separates Victims from Non-Victims  
[www.finrafoundation.org/sites/finrafoundation/files/exposed-to-scams-what-separates-victims-from-non-victims\\_0\\_0.pdf](http://www.finrafoundation.org/sites/finrafoundation/files/exposed-to-scams-what-separates-victims-from-non-victims_0_0.pdf)

**Joint SEC, FINRA and NASAA Resources:**

- Training for the Securities Industry: Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors

[www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training](http://www.finra.org/rules-guidance/key-topics/senior-investors/elder-abuse-prevention-training)

- Establishing a Trusted Contact Video

[www.finra.org/investors/learn-to-invest/brokerage-accounts/establish-trusted-contact](http://www.finra.org/investors/learn-to-invest/brokerage-accounts/establish-trusted-contact)

- Trusted Contact Fact Sheet

[www.finra.org/sites/default/files/2021-09/trusted-contact-infographic.pdf](http://www.finra.org/sites/default/files/2021-09/trusted-contact-infographic.pdf)

**Non-FINRA Resources:**

- AARP Fraud Watch Network Helpline (877-908-3360)

[www.aarp.org/money/scams-fraud/helpline.html](http://www.aarp.org/money/scams-fraud/helpline.html)

- The AARP BankSafe Initiative

[www.aarp.org/ppi/banksafe/](http://www.aarp.org/ppi/banksafe/)

- The AARP BankSafe Training

<https://interest.banksafetraining.aarp.org/?intcmp=PPI-BNKSF-TERTNAV-SIGNUP>

- US Department of Justice National Elder Fraud Hotline (833-372-8311)

[www.ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope](http://www.ovc.ojp.gov/program/stop-elder-fraud/providing-help-restoring-hope)

**State Reporting Resources:**

- National Center on Elder Abuse: State Resources and Reporting Directory

[www.ncea.acl.gov/Resources/State.aspx](http://www.ncea.acl.gov/Resources/State.aspx)

- HelpVul Unified Reporting Portal

[www.eversafe.com/helpvul/](http://www.eversafe.com/helpvul/)

- Bressler's 50 State Survey of Senior and Vulnerable Adult Investor Laws

[www.bressler.com/senior-map](http://www.bressler.com/senior-map)