

How the SEC Works to Protect Senior Investors

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PREFACE

This paper describes what the SEC is doing to protect senior investors. It places those actions in the broader context of regulatory and legal developments that give financial professionals new tools to protect seniors.

The paper is written for several audiences. The general public may be interested in the role of the SEC to protect senior investors. Financial professionals may wish to learn more about recent laws and regulations and to understand better how to use the new tools to protect senior customers. Likewise, attorneys may find the paper useful to enhance their understanding and to inform their counsel to financial firms or other relevant clients. Finally, regulatory policymakers and staff may find the paper useful in describing the work of individual SEC divisions and offices and in showing how those efforts come together in the SEC's multifaceted approach to addressing senior issues.

This paper complements my earlier white paper, "*Elder Financial Exploitation: why it is a concern, what regulators are doing about it, and looking ahead*"² (sec.gov/files/elder-financial-exploitation.pdf.) My goal in the white paper was to try to provide, in a single place, a comprehensive yet concise overview of the key issues of elder financial exploitation. Readers should turn to that

paper for a description of key causes of elder financial exploitation and factors driving its growth, from demographic and financial trends to effects of the aging brain. Though the white paper includes an appendix on the work of the SEC and other regulatory entities, that topic is not a focus of the white paper. Hence the need I felt to write this paper.

This paper grew out of two talks at events organized by and for attorneys, compliance officers, and other financial professionals. The events reflect the increasing interest among those professions to keep abreast of regulatory developments and to enhance their ability to protect senior investors.

I thank colleagues throughout the SEC who have generously offered their insights, information, and suggestions for this paper. These include Mark Cave, Charu Chandrasekhar, Alexandra Ledbetter, Suzanne McGovern, Tracey L. McNeil, Jennifer Palmer, Office of Market Intelligence's BSA Review Group members, Daniel Goldberg, Damon Reed, Andrae Eccles, and David Cohen, and colleagues in the Office of Compliance Inspections and Examinations (OCIE). And a special thanks to SEC Investor Advocate Rick Fleming for his encouragement and support. Any mistakes in this paper, however, are solely my own.

EXECUTIVE SUMMARY

This paper describes the multifaceted work of the SEC to protect senior investors. The work ranges from Commission policy-making and staff interpretations to the three E's of education, exams and enforcement.

Section One: Public Education and Outreach

This section describes the SEC's efforts to prevent senior investor fraud by informing the public on how to protect themselves. Senior investors are a key audience for the overall education and outreach activities, which range from in-person events to tele-townhalls, from publications to web pages and online content for seniors. The SEC complements its public outreach with public intake, which enables the public to reach the SEC to ask questions or submit complaints.

Section Two: Exams

This section describes the exam program and the priority it places on protecting seniors. Staff from the Office of Compliance Inspections and Examinations (OCIE) regularly examine broker-dealers, investment advisers, and other entities. The staff has been implementing the priority on protecting seniors in two ways: through risk-based exams, and a recent national initiative focused on more than 200 investment advisers that had a significant exposure to senior clients ("Senior-Focused Initiative"). This section summarizes preliminary staff observations from that initiative.

Section Three: Enforcement

This section describes the role of the Division of Enforcement in protecting seniors, which fits within its larger focus on protecting the interests of the Main Street, or retail, investor. The Division's Retail Strategy Task Force, set up in 2017, investigates fraudulent schemes that frequently target the most vulnerable members of the investing public, including senior investors. This section highlights several recent enforcement actions against schemes that targeted the elderly.

Section Four: Regulatory Policy

This section discusses Commission approval of rules to protect senior investors, as well as staff actions involving interpretation of the regulations. The Commission recently approved two significant FINRA rule changes that, starting last year, give broker-dealers new tools to protect seniors. In a subsequent development, SEC staff issued a no-action letter that provides no-action relief for mutual funds to use a similar tool for accounts held directly with the fund: the ability to pause redemptions for more than seven days when elder financial exploitation is suspected. This section explains what a no-action letter is and why an association of mutual funds and other entities asked the SEC staff to issue this one.

Section Five: Challenges

This section describes several challenges facing the SEC in its work to protect senior investors. The section begins with the external challenge of demographic, financial and other trends that are driving dramatic expected growth in elder financial exploitation and diminished capacity. A second challenge arises from the advent of new technologies, which give wrongdoers new ways to exploit the elderly, but which also give the SEC new ways to identify risks and combat wrongdoing. A third challenge is the weight of responsibility to act proactively and swiftly to try to prevent elder financial exploitation from occurring in the first place. Finally, policymakers face the challenge of striking the right balance to protect seniors while respecting their rights to privacy and autonomy.

Section Six: Suggestions for Financial Firms and Professionals

This section concludes the paper with suggestions that financial firms and professionals, their counsels and others may wish to consider to protect seniors.

SECTION ONE: PUBLIC EDUCATION AND OUTREACH

Senior investors are a key audience for the SEC's education and public outreach, which seeks to prevent investor fraud by informing the public on how to protect themselves.

Activities range from in-person events to webinars and tele-townhalls, from publications to web pages and online content devoted to seniors and senior issues. The public outreach is complemented by public intake, which allows the public to reach the SEC to ask questions or submit complaints. The SEC Office of Investor Education and Advocacy (OIEA) spearheads many of these activities on behalf of the Commission.

Over the past several years, Commission staff have engaged in hundreds of events devoted to older Americans and senior investor issues. These events have taken place around the country and have involved staff from both the SEC's headquarters in Washington, DC, and its 11 regional offices. Venues have included public libraries, senior-related financial fairs, senior centers and residences, and national conferences for investors and others.

Chairman Clayton conducted two tele-townhall events last year in collaboration with AARP. A total of 630 persons participated in a Denver-based call, and 764 persons participated in a Chicago-based call. The calls enabled the chairman to reach hundreds of seniors who were able to dial in from the convenience of their homes.

Outreach to other target audiences, such as veterans, sometimes overlaps with the activities for seniors. Commission staff have reached out to veterans in various venues, from military hospitals to military retiree appreciation events that were held at Joint Base McGuire-Dix-Lakehurst. To reach military elder caregivers across the country, staff have conducted webinars with information on how to manage the finances of elderly family members.

In June 2018, the SEC held its first-ever Town Hall outside of Washington with all commissioners. An estimated 500 people participated in the event in Atlanta, with seniors well represented among them.

The SEC hosts annual Global Summits to recognize World Elder Abuse Awareness Day.³ The United Nations General Assembly has designated June 15 as World

Elder Abuse Awareness Day. This year, the event at the SEC will take place on June 11, 2019. For more, see napsa-now.org/get-connected/weaad/.

In an important complement to the Commission's outreach efforts, staff regularly produce investor publications for seniors that can also be used by family members and caregivers. These publications and other content can be found online, both on the SEC's main website, sec.gov, and on the Commission's website devoted specifically to individual investors, investor.gov. The investor.gov site features a webpage (investor.gov/seniors) devoted to seniors.

The publications and other online content offer information on investment products, how to spot fraudulent schemes, and resources for preventing and reporting elder abuse. For example, one investor bulletin provides information to Adult Protective Services (APS) workers on how to identify seniors who have been victims of investment fraud, and what to do if they see signs of such abuse.

"Check Out Your Investment Professional" is one of the key messages. It makes the point that unlicensed, unregistered persons (who may claim to be financial professionals) commit much of the investment fraud in the United States.⁴ Therefore, the SEC urges investors always to check the background of any financial professional to make sure the person is licensed. OIEA delivers this message through multiple channels, from public service announcements on TV and radio to the content it posts on investor.gov. While the message applies to all individual investors, it will have a special resonance for seniors, who are often the targets of retail investor fraud.

The Office of the Investor Advocate also has sought to shine a spotlight on senior investor issues. Investor Advocate Rick Fleming has given speeches and he and his staff have spoken on several panels on elder financial exploitation and ways to protect senior investors. Last year, the office published the White Paper, "*Elder Financial Exploitation: why it is a concern, what regulators are doing about it, and looking ahead*" (sec.gov/files/elder-financial-exploitation.pdf).

Public intake is an important complement to public outreach. The SEC has dedicated teams, phone lines, and intake systems to receive and respond to inquiries and complaints from the public. The SEC receives tens of thousands of complaints, questions, and other contacts every year.

Separately, the SEC Ombudsman (housed in the Office of the Investor Advocate) fields public inquiries and complaints about the SEC itself or the self-regulatory organizations, such as FINRA, that the SEC regulates. Of the nearly 1,500 inquiries received in fiscal year 2018, SEC Ombudsman Tracey McNeil estimates that about two-thirds came from persons 55 and older. (The Office of the Ombudsman does not ask persons to give their age, but some individuals voluntarily identify themselves as seniors or make that clear from the context.)

On an annual basis, the Investor Advocate reports to Congress on problems that investors have had with financial service providers and investment products. The report provides lists of problematic products and practices as identified by the SEC, FINRA, the North American Securities Administrators Association (NASAA), and the Municipal Securities Rulemaking Board (MSRB).⁵

SECTION TWO: EXAMS

Exams

The SEC's exam program constitutes one of the pillars of the Commission's activities to protect senior investors. Staff from the Office of Compliance Inspections and Examinations (OCIE) regularly examine broker-dealers, investment advisers, and other entities. OCIE's mission is to improve compliance, prevent fraud, monitor risk, and inform policy. The SEC uses exam findings to inform rule-making initiatives, identify and monitor risks, improve industry practices and pursue misconduct—all of which are highly relevant to the goal of protecting senior investors.

OCIE establishes its national exam priorities each year. This year, as in past years, protecting seniors remains a priority. *The 2019 Examinations Priorities* states:

Senior Investors and Retirement

Accounts and Products

OCIE will conduct examinations that review how broker-dealers oversee their interactions with senior investors, including their ability to identify financial exploitation of seniors. In examinations of investment advisers, OCIE will continue to review the services and products

offered to seniors and those saving for retirement. These examinations will focus on, among other things, compliance programs of investment advisers, the appropriateness of certain investment recommendations to seniors, and the supervision by firms of their employees and independent representatives.⁶

OCIE has been implementing its priority on seniors in two ways: through risk-based exams and a recent focused national initiative.

Risk-based exams of broker-dealers

As noted earlier, broker-dealers are now subject to two recent FINRA rule amendments. One of the rules allows broker-dealers to place a temporary hold on disbursements from a client's account when elder financial exploitation is reasonably suspected.⁷ The other rule seeks to facilitate communication between a firm and a customer's trusted contact to address possible financial exploitation.⁸ (See Section Four: Regulatory Policy for more details of the FINRA rule changes.) Since these rule changes took effect in February 2018, OCIE has been examining how broker-dealers have been implementing and complying with them. The aim of the exams is to emphasize these new rules and foster broker-dealer compliance. It is still too early to state any conclusions on how broker-dealers are implementing these rule changes.

A national initiative focused on investment advisers

Unlike broker-dealers, investment advisers are not subject to FINRA rules but are subject to a principles-based fiduciary obligation to their clients. To understand how investment advisers serve their older clients, OCIE recently conducted a national initiative focused on more than 200 investment advisers that had a significant exposure to senior clients ("Senior-Focused Initiative"). That exposure was determined in either or both of two ways: the investment adviser had a significant number of clients who were 62 years of age or older ("senior clients"), and/or the account balances of senior clients represented a significant amount of the adviser's total assets under management. The exams took place over a six-month period ending in the first quarter of fiscal year 2019.

The exams reviewed the investment advisers' policies, procedures, and practices that address their senior clients. Under that general umbrella, the exams focused on a number of particular topics, including whether senior clients were providing the investment advisers with trusted contacts, how the investment advisers were dealing with concerns for senior clients' diminished capacity, what the investment advisers' practices were for handling client requests for changes in beneficiaries, and what training the investment advisers were providing their staff on elder financial exploitation and protecting senior clients.

The number of investment advisers that had such policies varied with each of these topics, often ranging from a one-third to one-half of the firms examined. Some of the practices were adopted in written policies and procedures, while others were unwritten or informal.

A few of the investment adviser exams uncovered what OCIE considered to be compliance weaknesses at the firms. One common theme is that the investment advisers did not tailor their policies to their specific business model and client base. (The same observation has come up in past, separate exams of broker-dealers.) Another recurrent weakness is that some policies and procedures lacked specificity. For example, some of the firms' escalation policies did not specify the concrete steps that representatives and others should take if they suspected elder financial exploitation.

Following are some preliminary, high-level staff observations of the Senior-Focused Initiative exams. This is a non-exhaustive summary of selective observations, and does not purport to represent all observations or to describe any one observation in full detail.

Preliminary Staff Observations from Senior-Focused Initiative Exams

- **Senior Clients:** Most of the examined investment advisers had policies, procedures, and practices that addressed senior clients. The staff observed weaknesses in a few of the investment advisers' written policies and procedures, primarily because they were not tailored to the advisers' particular circumstances, business models, or client base. For example, some firms adopted the policies and procedures of other entities, such as those implemented by affiliated

broker-dealers, without making necessary changes to the text. Thus, the policies still bore the name of the affiliates rather than that of the examined investment advisers, or the text retained the instruction, "[fill in name]."

Another observation identified by staff was that the firms delegated certain tasks to third parties, such as the clients' custodians, but did not always memorialize that delegation in the investment advisers' policies and procedures.

Some firms also did not define the criteria—such as age, retirement status, or other factors—for determining which clients they would count as seniors. As a result, it was unclear which clients were subject to the investment advisers' policies on seniors.

- **Accounts of Retirees:** Several of the examined investment advisers had policies and procedures that addressed the management and oversight of the accounts of clients who were retired. (Conversely, many did not have such policies.) Among the firms with policies, some had adopted written policies and procedures and some followed informal or unwritten practices.
- **Diminished Capacity:** Many of the examined investment advisers had policies that specifically addressed the management and oversight of the accounts of clients whom the firm perceived as having diminished capacity or competence.

Although the staff did not define diminished capacity for purposes of the Senior-Focused Initiative, others have defined financial capacity as "the capacity to manage money and financial assets in ways that meet a person's needs and which are consistent with his/her values and self-interest."⁹ A decline in that ability is called impaired or diminished financial capacity.¹⁰ It can significantly weaken a person's financial judgment. Persons with cognitive impairment may be unable to protect themselves from financial exploitation or even recognize that they are being exploited.¹¹

The staff observed weaknesses in a few of the investment advisers' policies on diminished capacity. For example, some firms did not provide employees with sufficient information on how to recognize signs

of diminished capacity, whereas other policies gave overly general guidance that was lacking in specificity. For instance, some investment advisers' escalation policies called for employees with concerns about a client's capacity to consult with an attorney, without elaborating on who that attorney should be. That left it to the individual employee to determine whom to consult—whether it be the firm's compliance department, in-house counsel, outside counsel, or the client's own attorney.

The staff also observed that the record keeping systems did not always support the policy requirements. For example, some policies required firms to note in their record keeping systems any concerns they had regarding a client's possible diminished capacity. However, the record-keeping systems at some firms neither allowed for such coding, nor could they generate reports identifying those clients and accounts where such concerns had been noted.

- **Point of Contact:** Most of the examined investment advisers had policies, procedures, and practices that contemplated reaching out to trusted points of contact in the event that any of their clients appeared to develop diminished capacity or be the subject of attempted financial exploitation. If such situations arose, some policies required contacting the clients' next of kin or trusted contacts. However, such blanket requirements did not take into account situations where the clients did not provide the names of trusted contacts because the firm did not require them to do so. (Similarly, the FINRA rule requires only that broker-dealers ask clients to name trusted contacts, not that clients provide one.)¹² Thus, a situation might arise in which the investment advisers' employees found themselves unable to carry out the firms' policy requirement.
- **Change of Account Beneficiary:** Most of the examined investment advisers had policies, procedures, and practices that addressed the handling, monitoring and supervising of client requests to change the beneficiaries listed for their accounts. The staff observed weaknesses in the procedures implemented by some of the firms.

In one area of weakness, some investment advisers limited their procedures only to specific products or accounts, such as insurance products, IRAs, or retirement accounts. Marking certain products or accounts for elevated scrutiny was not a problem in itself; indeed, the enhanced checks could well be of benefit to clients. Instead, the problem arose from the absence of comparable change-of-beneficiary policies and procedures for the other types of products and accounts. Among other issues, selective higher scrutiny of certain accounts and products could raise false expectations and engender false confidence among senior clients that all of their accounts and investments were subject to this higher scrutiny.

In another observation, some investment advisers' policies did not specify how accounts flagged for suspicious changes ("red flag" accounts) would be monitored and supervised.

OCIE staff also observed that some investment advisers required notarized consent from a client's spouse for all change-of-beneficiary requests, even when the spouse was not named as an account holder. However, generally speaking, consent should not be required if the spouse is not an account holder.

- **Training:** While the staff observed that some of the investment advisers had presented or provided trainings to their employees on issues relating to senior clients, most firms had not provided such trainings to their employees.

This latest exam initiative to help protect senior investors builds upon a series of earlier ones that spans more than a decade and encompasses both investment advisers and broker-dealers.

In 2008, OCIE joined with FINRA and NASAA to publish a white paper on practices that financial services firms could use to strengthen their policies and procedures for serving investors as they approach and enter retirement.¹³ Two years later, the three published an updated addendum, which focused on specific, concrete steps that firms were taking or practices they had implemented since the prior review to identify and respond to issues that were common in working with senior investors.¹⁴

In 2013, OCIE launched the National Senior Investor Initiative in coordination with FINRA. Staff examined 44 broker-dealers on how firms conducted business with senior investors (aged 65 years old or older) as they prepared for and entered into retirement. The exams focused on the types of securities senior investors were purchasing and the methods firms were using when recommending securities. In addition, the exams reviewed how firms were training their representatives and supervisors on issues related to aging, such as diminished capacity and elder financial abuse. OCIE and FINRA issued a report on their findings in 2015.¹⁵

In 2015, OCIE launched a multi-year Retirement-Targeted Industry Reviews and Examinations (ReTIRE) Initiative.¹⁶ The initiative focused on certain higher-risk areas of investment adviser and broker-dealer sales, investment, and oversight processes, with particular emphasis on select areas where retail investors saving for retirement may be harmed.

In 2018, OCIE launched its Senior-Focused Initiative, which reviewed the compliance policies and procedures of advisers that had a considerable senior client base. The focus of these examinations and the staff's observations from this national initiative are discussed above.

These initiatives track the evolution of industry policies, procedures and practices to bolster protections for seniors, retirees, and those saving for retirement. By asking questions and communicating findings, the initiatives have helped to raise the profile of these issues and bring about improvements in industry policies and practices.

SECTION THREE: ENFORCEMENT

The SEC Division of Enforcement places a high priority on combatting fraud against seniors. That priority should be seen in the larger context of protecting all retail (that is, individual) investors.¹⁷ Chairman Jay Clayton has stated, "Serving and protecting Main Street investors is my main priority at the SEC."¹⁸

In 2017, the Enforcement Division formed the Retail Strategy Task Force (RSTF) to develop and implement strategies and techniques for addressing the types of misconduct that most affect retail investors. The RSTF investigates cases such as Ponzi schemes, "pump and dump" frauds, and sales of unsuitable complex products.

These schemes frequently target the most vulnerable members of the investing public—senior investors in particular.

The RSTF is a national initiative, led by Enforcement Division attorneys who are focused on data-driven approaches to identifying and bringing enforcement actions against retail fraud. The RSTF partners with OCIE and DERA on its initiatives, and also coordinates with the Office of Investor Education and Advocacy (OIEA) to inform the public about red flags involving securities fraud.

Stephanie Avakian, Co-Director of the Enforcement Division, elaborated on the public education component in a speech:

But enforcement alone is not enough. A critical part of investor protection is education. And part of the Task Force's mandate will be to focus on investor outreach, converting what they learn about problematic conduct into direct messaging to investors. They will work together with folks in our regional offices and others across the Commission—like the Office of Investor Education and Advocacy—to identify areas where targeted education and outreach efforts are likely to benefit investors. An educated investor is an empowered investor, and our goal is to empower investors so that they are able to make informed investment decisions.¹⁹

That coordination is illustrated in a recent Enforcement Division action against a multimillion dollar Ponzi scheme that targeted seniors, discussed below. On April 9, 2018, when the SEC announced this Enforcement action, the RSTF and the OIEA also published an Investor Bulletin titled *Ponzi Schemes Targeting Seniors* ([investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-ponzi-schemes-targeting-seniors](https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-alert-ponzi-schemes-targeting-seniors).) Thus, SEC Enforcement attorneys were going to court to hold alleged wrongdoers accountable, while RSTF and OIEA were simultaneously working proactively to explain to the public how to avoid such schemes in the first place.

Following are recent examples, listed in reverse chronological order, of SEC enforcement actions against schemes that targeted and victimized seniors.

- **September 2018 Action Alleging \$1 Million Scheme.** On September 25, 2018, the SEC charged a former Dayton, Ohio registered representative with defrauding his retail brokerage customers out of more than \$1 million in a long-running scheme. According to the SEC’s complaint ([sec.gov/litigation/litreleases/2018/lr24287.htm](https://www.sec.gov/litigation/litreleases/2018/lr24287.htm)), most of the injured customers were elderly with little to no financial expertise and were particularly vulnerable. Several of the alleged victims were suffering from Alzheimer’s disease or other forms of dementia, and at least five of the victims passed away during the course of his fraud. The defendant had received more than \$230,000 in brokerage commissions from these customers, according to the complaint.²⁰

- **April 2018 Action Alleging \$2.4 Million Ponzi Scheme and a Related \$1.4 Million Offering Fraud.** On April 9, 2018, the SEC announced that it had charged two Texas companies and their principals in a multimillion dollar Ponzi scheme targeting seniors. According to the complaint, at least 30 elderly victims were lured into investing approximately \$2.4 million of their retirement savings with baseless promises and claims of outsized investment returns. One of the alleged wrongdoers allegedly used roughly \$1.3 million of the proceeds for personal expenses, including country club memberships, daily living expenses, travel, and entertainment expenses. According to the complaint, those charged kept the Ponzi scheme afloat for years by paying early investors with later investors’ funds and by convincing investors to roll over their investments. The complaint also alleged that one of the men pilfered from the estate of an elderly woman’s family trust, diverting nearly \$100,000 to fund the Ponzi scheme.²¹

In addition, the SEC’s complaint alleges that, beginning in 2015, the two men orchestrated a second offering fraud that used misrepresentations and empty promises to convince a group of predominately elderly victims to invest roughly \$1.4 million.²²

- **March 2018 Action Alleging Fraud by Prominent Pastor.** On March 30, 2018, the SEC charged a pastor who allegedly preyed on elderly victims by giving

them false assurances while selling them worthless bonds. In reality these bonds were just collectible memorabilia with no meaningful investment value.²³

According to the complaint, the two men raised at least \$3.4 million from 29 mostly elderly investors, some of whom liquidated their annuities to invest in this scheme. The two men allegedly took approximately \$1.8 million of investor funds to pay for personal expenses, including mortgage payments in the case of the pastor and luxury automobiles in the case of the other man. Offshore individuals allegedly received most of the remaining funds.²⁴

- **December 2017 Action Alleging \$1.2 Billion Ponzi Scheme.** On December 21, 2017, the SEC announced charges and an asset freeze against a group of unregistered funds and their owner, who allegedly bilked thousands of retail investors, many of them seniors, in a \$1.2 billion Ponzi scheme.²⁵

According to the SEC complaint, an individual and a group of unregistered investment companies formerly headquartered in Boca Raton, Florida, defrauded more than 8,400 investors in unregistered funds. Investors’ money allegedly was used to pay other investors as well as \$64.5 million in commissions to sales agents who pitched the investments as “low risk” and “conservative.” The individual charged allegedly diverted at least \$21 million for his own benefit, including to charter planes, pay country club fees, and buy luxury vehicles and jewelry. According to the complaint, the scheme collapsed in typical Ponzi fashion in early December as the group of funds stopped paying investors and filed for Chapter 11 bankruptcy protection.²⁶

- **July 2017 Action Alleging \$10 Million, Telemarketing Boiler Room Fraud.** On July 12, 2017, the SEC brought fraud charges against 13 individuals allegedly involved in two Long Island-based cold calling scams that bilked more than 100 victims out of more than \$10 million through high-pressure sales tactics and lies about penny stocks. Many of the victims were senior citizens. In a parallel action, the U.S. Attorney’s Office for the Eastern District of New York announced criminal charges.²⁷

The SEC alleges that the orchestrators of the scheme used boiler room-style call centers to make hundreds of thousands of cold calls that included the use of threatening and deceitful sales techniques to pressure victims into purchasing penny stocks. Wrongdoers allegedly realized more than \$14 million in illegal proceeds, while the victims lost millions of dollars, including retirement savings.²⁸

“The defendants allegedly used boiler rooms and high-pressure sales tactics to swindle seniors into investing their life savings in microcap securities they were secretly manipulating for their own profit,” said Scott W. Friestad, Associate Director of the SEC’s Enforcement Division. “But, through a combination of technology and innovative investigative approaches, we were able to unravel the alleged scheme and prevent further investor harm.”²⁹

The Commission draws on multiple sources to ferret out fraud against seniors and other investors. One of those sources consists of Suspicious Activity Reports (SARs), which banks, broker dealers, mutual funds, and other financial institutions are required to file with the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN). In 2013, the SAR form was updated to include a specific check box indicating that the filer suspected that the case involved elder financial exploitation.³⁰ Since then, financial institutions have reported more 180,000 suspicious activities targeting older adults, involving a total of more than \$6 billion. From 2013 to 2017, the number of SAR filings on elder financial exploitation increased more than four-fold, reaching 63,500 filings in 2017. Financial institutions reported a total of \$1.7 billion in suspicious activities targeting older persons in 2017, including actual losses and attempts to steal the older adults’ funds.³¹

The SEC is among the financial regulators and law enforcement agencies that monitor SAR filings and follow up with investigations or other actions as appropriate. The Enforcement Division’s Office of Market Intelligence has a dedicated team, the Bank Secrecy Act Review Group, which reviews SAR filings, screens them for reports that fall within the Commission’s jurisdiction, and determines next steps, which could include SEC staff investigations, examinations, or referrals to law enforcement agencies and other regulators, among others.

The team makes a priority of handling certain SARs filings, such as reports of suspected elder financial exploitation.

The SEC also relies upon tips from the public as an important source of its investigations. The SEC’s Tips, Complaints and Referrals (TCR) online portal allows the public to provide information on suspected securities violations. The elderly are often among the victims of several types of securities violations that can be reported, including Ponzi and pyramid schemes, theft or misappropriation of funds or securities, and manipulation of a security’s price or volume. For more information, see *Investor Bulletin: Investor Complaints*³² (investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-investor-complaints.) To report a complaint, visit sec.gov/tcr.

A third important source of tips is the SEC’s Whistleblower Program, under which the Commission can make monetary awards to eligible individuals who voluntarily provide original information that leads to successful Commission enforcement actions resulting in monetary sanctions over \$1 million and successful related actions. For more information or to submit a tip, visit sec.gov/whistleblower, or call the SEC’s whistleblower hotline at (202) 551-4790.

SECTION FOUR: REGULATORY POLICY

In February 2017 the SEC approved two FINRA rule changes to give broker-dealers new tools to protect seniors.³³ Because FINRA is a self-regulatory organization, its rules generally must be approved by the SEC before taking effect. In a subsequent development, an action by SEC staff, in effect, gives mutual funds a green light to use one of the new tools as well. Meanwhile, the U.S. Congress and a number of states have adopted laws to encourage various types of financial institutions to protect seniors. These laws, though outside the scope of SEC action, are worth noting because of their significance for financial firms and because they help put FINRA and SEC actions in a larger context.

FINRA Rule Changes

FINRA Rule 4512, “Customer Account Information,” as amended, requires firms to make reasonable efforts to obtain the name and contact information for a trusted contact person when a retail customer’s account is

opened and when the account information is updated. (The rule applies to individual clients, not institutional investors.) Firms are required to ask for the information, but customers are not required to provide it. If the customer declines to do so, the firm can still open the account.³⁴

FINRA Rule 2165, “Financial Exploitation of Specified Adults,” permits broker-dealers to place a temporary hold on disbursements of funds or securities from the accounts of certain customers, if the broker reasonably believes that financial exploitation of the customer has occurred, is occurring, has been attempted or will be attempted.³⁵ The rule covers customers who are age 65 and older as well as those who are 18 or older and who, the broker-dealer reasonably believes, have a mental or physical impairment that prevents them from protecting their own interests.

The rule allows—but does not require—broker dealers to place a hold on disbursements if they suspect financial exploitation. In this sense, the regulation is permissive rather than mandatory. If a firm places a hold on a customer’s account, the firm must notify the trusted contact unless the firm reasonably believes that the trusted contact is engaged in the financial exploitation. As a condition to qualify for the safe harbor, firms are also required to provide training to employees and associated persons.³⁶

The two FINRA rule changes took effect in February 2018, one year after the SEC approved them.

The NASAA Model Act and State Laws

Meanwhile, a total of 21 states have adopted laws (or regulations) that would permit certain financial firms to pause disbursements when financial exploitation is suspected.³⁷ The measures are patterned on the Model Act to Protect Vulnerable Adults from Financial Exploitation, which was adopted in January 2016 by the North American Securities Administrators Association (NASAA), the association of state securities regulators.³⁸ Whereas the FINRA rule changes apply solely to broker-dealers, NASAA’s Model Act applies both to broker-dealers and investment advisers.

The Senior Safe Act

In 2018, Congress passed and the President then signed into law the Senior Safe Act of 2018.³⁹ The Act

provides various types of financial institutions with immunity for disclosing the suspected exploitation of a senior citizen to certain agencies, including state securities and insurance regulators and state or local agencies responsible for administering adult protective service laws. The law applies to credit unions, depository institutions (such as banks), investment advisers, broker-dealers, insurance companies and agencies, and transfer agents, as well as certain of their employees and affiliated or associated representatives.

As a condition of receiving the immunity, financial institutions must provide training to employees, registered representatives, insurance producers, or affiliated or associated investment adviser representatives. The training must include “how to identify and report the suspected exploitation of a senior citizen internally and, as appropriate, to government officials or law enforcement authorities, including common signs that indicate the financial exploitation of a senior citizen. . . .” In addition, the training must “discuss the need to protect the privacy and respect the integrity of each individual customer. . . .”⁴⁰

SEC No-Action Letter

All FINRA rules apply only to broker-dealers, not to other types of financial institutions, such as mutual funds and their transfer agents. Therefore, the safe harbor in FINRA Rule 2165, which permits a pause on disbursements when elder financial exploitation is reasonably suspected, is available only to broker-dealers.

Mutual funds are subject to a requirement that prevents them from delaying a redemption for more than seven days. Specifically, Section 22(e) of the Investment Company Act of 1940 prohibits a mutual fund from suspending the right of redemption or delaying the disbursement of redemption proceeds for more than seven days after receiving a redemption request from a mutual fund shareholder.⁴¹

While most mutual fund shares are distributed by broker-dealers, some mutual fund shareholders have accounts that are held directly with the mutual fund and serviced by the fund’s transfer agent. The FINRA safe harbor would not be available to these latter “direct-at-fund” accounts, which would instead be subject to the seven-day restriction in Section 22(e). This disparate treatment for mutual fund customers of broker-dealers

and mutual fund direct-at-fund accountholders led the Investment Company Institute (ICI) to request SEC staff action.⁴² ICI is a trade association representing mutual funds, closed-end funds and ETFs. The ICI letter described this disparity as a “Gap in the Protection of Mutual Fund Investors.”⁴³

To close this gap, the ICI requested that SEC staff provide assurance by issuing a document called a no-action letter. A no-action letter states that SEC staff will not recommend enforcement action against an entity for taking a particular action under defined circumstances. In this case, ICI requested assurance that SEC staff would not recommend enforcement action to the Commission under Section 22(e) of the 1940 Act against a mutual fund or its SEC-registered transfer agent if a temporary hold is placed on the disbursement of redemption proceeds for the protection of Specified Adults in the case of direct-at-fund accounts, provided that that transfer agent complies with a set of conditions that correspond to those imposed on broker-dealers under FINRA Rule 2165.

The SEC Division of Investment Management provided that assurance in a no-action letter on June 1, 2018. The letter provides staff no-action relief to mutual funds and their transfer agents to pause redemptions in a manner that it is consistent with the FINRA rule if elder financial exploitation in a direct-at-fund account is reasonably suspected.⁴⁴

SECTION FIVE: CHALLENGES

What are the challenges the SEC faces in seeking to protect senior investors?

The first challenge is an external one: the challenge of the times. The aging of America’s population is placing increasing numbers of seniors at risk of Alzheimer’s disease or other forms of cognitive impairment, and that in turn makes them more vulnerable to elder financial exploitation. Financial trends have reinforced the demographic trends. A decade-long shift from defined benefit to defined contribution retirement plans has placed the onus on many more retirees to manage their retirement savings themselves—ironically, just at the time they may develop cognitive impairments that impair their ability to shoulder the financial responsibility. Meanwhile, the low interest-rate environment that has prevailed since the

financial crisis of 2008 has tempted some retirees, along with other investors, to reach for yield. As a result, some have fallen prey to the false glitter of fraudulent schemes that promise returns that seem, and actually are, too good to be true. All of these factors have combined to exacerbate the challenges faced by the array of governmental agencies and non-governmental organizations, the SEC among them, to protect seniors.⁴⁵

Technology is a second challenge, and it is a double-edged sword. On the one hand, wrongdoers have become, and likely will continue to become, increasingly sophisticated in their use of new technologies and new platforms with which to exploit seniors and other vulnerable individuals. On the other hand, technology also presents new opportunities for the SEC and others to work smarter and more effectively in combatting elder abuse. OCIE, for instance, leverages technology to detect areas of risk, identify firms that may present heightened risk of non-compliance, and uncover activities that may harm investors.⁴⁶ Likewise, the Retail Strategy Task Force leverages technology and data analytics to assess risks, identify patterns, and pursue investigations of suspected incidents of widespread misconduct targeting retail investors.⁴⁷

The third challenge is the heavy responsibility to move proactively and swiftly to try to prevent elder financial exploitation from occurring in the first place. There is a sense of urgency because elder financial exploitation can cause significant financial and non-financial harm. In some cases, financial abuse deprives seniors of their life savings. A 2016 study titled *The New York State Cost of Financial Exploitation* estimated that seniors (age 60 and older) suffered annual losses totaling between nearly \$352 million and more than \$1.5 billion. Moreover, the study found that a mere 5 percent of victims partially or completely recovered the items or funds taken from them.⁴⁸ Beyond the monetary losses, elder financial exploitation can cause emotional pain and health issues.⁴⁹ As we have seen, the SEC seeks to meet this challenge with a multifaceted approach that involves education, exams, enforcement, and other activities.

A fourth challenge is to strike the right balance when values and rights come into conflict. On the one hand, we feel a responsibility to protect the elderly and other vulnerable individuals from exploitation. But we also respect the rights of all persons, including the elderly,

to privacy and autonomy—and, in practical terms, that includes the rights of the elderly to make their own financial decisions and to have access to their accounts.

FINRA Rule 2165 and the Model Act are significant for the ways that they strike this balance. The safe harbor permits financial professionals and firms, under prescribed conditions and for a limited time, to refuse to honor the explicit request of a client to withdraw his or her money or securities. That is a dramatic example of a policy choice that places a priority on protecting the elderly from suspected financial exploitation, even if it comes at the expense of the individual's autonomy.

To temper that policy choice, the measures impose various constraints and conditions on the safe harbor, from training requirements to limits on the time period of the hold. Some of these conditions are harmonized between the two measures. Moreover, both measures limit the safe harbor and apply only to pauses on disbursements out of the client's account, not to transactions within the account, such as client buy and sale orders. FINRA and NASAA took different paths, however, on the question of mandatory reporting.

NASAA chose mandatory reporting. The Model Act requires firms promptly to notify the state securities regulator and Adult Protective Services if they have a reasonable belief that financial exploitation of an eligible adult may have occurred, been attempted, or is being attempted. It is noteworthy that this requirement applies whether or not the firm chooses to pause the disbursement.

FINRA, in contrast, chose against imposing mandatory reporting to state or federal authorities. Rule 2165 does, however, require firms to notify a client's trusted contacts if the firm pauses a disbursement because of suspected elder financial exploitation (unless the trusted contact himself is suspected of the financial exploitation).

Communicating to others about a client—and about such sensitive topics as the client's accounts, health, and signs of dementia—raises questions about the client's right to privacy. Here both the FINRA rules and NASAA struck a balance that seeks to encourage communication while still honoring the client's right to privacy.

FINRA Rule 2145 requires firms to ask clients to name a trusted contact,⁵⁰ and Rule 2145 permits firms to speak only to a client's designated trusted contacts and to no one else. The firm has no safe harbor to contact the client's relatives or any others who are not listed as

trusted contacts, even if a firm suspects elder financial exploitation or has concerns about a client's health or signs of a dementia. This provision clearly places a premium on the client's privacy.

At the same time, firms may discuss a wide range of topics with the trusted contacts. FINRA makes clear that the rule intends for trusted contacts to serve as a resource for broker-dealers. Firms may communicate with the trusted contact when the brokerage is concerned that the customer is being financially exploited but the firm has not yet decided to place a temporary hold on a particular disbursement. Furthermore, the firm may contact the trusted contact and disclose the customer's account information to inquire about the customer's health status. FINRA explicitly states that a brokerage firm may communicate with the trusted contact if it suspects that the customer may be suffering from Alzheimer's disease, dementia or other forms of diminished capacity.⁵¹

Similarly, the Model Act allows firms to notify third parties previously designated by the client about suspected financial exploitation (unless the firm suspects the third party of financial exploitation or other abuse of the client).⁵² The Senior Safe Act provides a safe harbor for firms to report suspected elder exploitation to certain government agencies, but the law does not address any communication with non-governmental third parties. Notably, the Senior Safe Act highlights "the need to protect the privacy and respect the integrity of each individual customer of the covered financial institution."⁵³

The FINRA rules and Model Act are permissive rather than mandatory in one crucial respect. They permit, but do not require, financial firms to pause a disbursement if they suspect elder exploitation. Crafting permissive rules presents yet another challenge for policymakers. On the one hand, the measures should include provisions to hold financial firms accountable to use their new tools responsibly. On the other hand, those provisions should not be so onerous as to discourage firms from using the new tools in the first place. That would defeat the very purpose of the regulation—to protect the elderly from financial exploitation. Take, for example, the question of mandatory reporting to state or federal authorities. Does that constitute a good way to hold firms accountable for placing a hold on disbursements when they suspect elder financial exploitation? Or would such mandatory reporting have a chilling effect? Reasonable

persons may hold different views on the question. It does, however, illustrate the types of choices with which policymakers must wrestle.

To be sure, virtually any issue confronts policymakers with the challenge of balancing competing interests and viewpoints, where both sides may have some merit. But when it comes to protecting the elderly, the choices touch on fundamental yet conflicting values and rights involving privacy, autonomy, and protection. It is particularly challenging to craft regulations that strike the right balance.

SECTION SIX: SUGGESTIONS FOR FINANCIAL FIRMS AND PROFESSIONALS TO CONSIDER

Financial firms should have strong policies, procedures and practices to protect seniors who are their clients. Financial firms and financial professionals should understand and, where appropriate, use the new tools that recent laws and regulations afford them to protect seniors and other vulnerable investors from financial exploitation. Counsel to these firms also should understand the details of the new laws and regulations and advise their clients accordingly.

Following is a non-exclusive list of suggestions to consider.

Establish and Follow Sound Policies for Seniors

1. Firms should establish and follow policies, procedures, and practices that specifically address seniors. The policies should be tailored to the firm's particular business, clients, and circumstances.
2. Firms should draw up a road map that shows employees what to do if they suspect financial exploitation. The more specific, the better. Policies should include clear escalation procedures that make clear what steps registered representatives and other employees should take and who in particular they should notify.

Know and Comply with the New Laws and Regulations

3. Financial firms and professionals should know what the new tools are and how to apply them to protect senior investors. Specifically, firms and professionals should understand the requirements, conditional safe harbors, and other provisions of FINRA Rule

2165 ("Financial Exploitation of Specified Adults"), FINRA Rule 4512 ("Customer Account Information"), NASAA's Model Act to Protect Vulnerable Adults from Financial Exploitation, state laws patterned on the Model Act, and the Senior Safe Act. As we have seen, the new laws and regulations overlap in some ways while differing in others. Some address broker-dealers only; others also address investment advisers; still others cover a still wider group of financial institutions. Firms should understand which laws or regulations apply to them.

4. Firms should comply with all the conditions required to be able to use the safe harbors provided by these new measures. In other words, to be able to protect their clients, firms should take steps necessary to protect themselves. For example, FINRA Rule 2165 requires firms to provide training as a condition of becoming eligible for the safe harbor for pausing a disbursement.

Engage in Training

5. Firms should train their employees and affiliated or associated representatives on the signs of financial exploitation and the steps to take if they spot or suspect abuse. As we have seen, training is a prerequisite for firms that wish to avail themselves of the safe harbor provided in FINRA Rule 2165 and the immunity provided in the Senior Safe Act.

But it's not just a question of compliance. Training enables financial professionals to do the right thing to protect their senior customers. Financial professionals are not doctors, but they often find themselves on the front lines of spotting signs of cognitive decline and red flags of elder financial exploitation. That makes it crucial for financial professionals to have the training to recognize the warning signs and to know what to do if they see them.

6. Firms should consider sending appropriate employees and affiliates to conferences or other training events to keep abreast of issues, share experiences, and learn best practices on how to protect senior investors. Likewise, attorneys who have financial firms as clients should attend conferences and other continuing education events to maintain their knowledge of the issues, follow developments, and inform the advice they provide to clients.

Beyond Compliance: Take Action, Including Voluntary Action, to Protect Seniors

7. Financial firms and professionals should go beyond compliance and strongly consider taking voluntary action, if warranted, to protect seniors. This is especially true where permissive regulations encourage but do not mandate certain actions. In particular, firms and professionals should consider taking appropriate action in these four areas:

- a. Pausing disbursements when elder financial exploitation is reasonably suspected;
- b. Contacting a client's trusted contacts when suspicions arise about attempted elder exploitation, when questions emerge about the client's health, cognitive decline or diminished financial capacity, or when certain other issues come up that a trusted contact could shed light upon;
- c. Notifying appropriate state and federal authorities of suspicions of elder financial exploitation; and
- d. Providing training to relevant staff (employees or affiliates) on ways to protect seniors, spot red flags, and report suspicions internally or externally.

8. There is also a role for attorneys who practice elder law. If they have a client who is a victim of elder abuse, they should consider whether the case involves a violation of securities laws. Where appropriate, attorneys should consider reporting the matter to the SEC or encouraging their clients to do so through the TCR or Whistleblower programs.

In summary, financial professionals now have new tools to combat elder financial exploitation and to identify and report signs of customers' cognitive decline. New laws and regulations recognize the problems, which are expected to grow dramatically with the aging of America and other trends. Government cannot solve these problems alone. We as a society need the active and informed support of financial firms and financial professionals, and their outside counsel, to contribute their part to protect seniors.

ENDNOTES

- 1 As Engagement Adviser in the SEC Office of the Investor Advocate, Stephen Deane assists the Investor Advocate in engaging with investors and other stakeholders. He also advises the Investor Advocate on various policy matters, including elder financial exploitation as well as corporate governance, ESG, and auditing and accounting issues. He is the author of the white paper *Elder Financial Exploitation: Why it is a concern, what regulators are doing about it, and looking ahead*, available at <https://www.sec.gov/files/elder-financial-exploitation.pdf>. More biographical information about him is available here: <https://www.sec.gov/biography/deane-stephen>.
- 2 Stephen Deane, SEC Office of the Investor Advocate, *Elder Financial Exploitation: Why it is a concern, what regulators are doing about it, and looking ahead* (2018), <https://www.sec.gov/files/elder-financial-exploitation.pdf>.
- 3 See <https://www.un.org/en/events/elderabuse/> (last accessed May 1, 2019).
- 4 See <https://www.investor.gov/research-you-invest/methods-investing/working-investment-professional/check-out-your-investment>.
- 5 See SEC, Office of the Investor Advocate, *Report on Activities, Fiscal Year 2018* (Dec. 20, 2018), <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2018.pdf>. The Investor Advocate provides two reports to Congress, one on the office's activities and the other on its objectives for the following year. Each report contains within it a Report by the Ombudsman.
- 6 SEC, Office of Compliance Inspections and Examinations, *2019 Examination Priorities* (Dec. 20, 2018), at 7 (emphasis in original), <https://www.sec.gov/files/OCIE%202019%20Priorities.pdf>.
- 7 Financial Industry Regulatory Authority, Inc., Notice of Filing of Partial Amendment and Order Granting Accelerated Approval of the Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults), Exchange Act Release No. 79964, 82 Fed. Reg. 10,059 (published Feb. 9, 2017).
- 8 *Id.*
- 9 Naomi Karp & Ryan Wilson, AARP Public Policy Institute, *Protecting Older Investors: The Challenge of Diminished Capacity 1* (2011) (citing Daniel C. Marson et al., *Assessing Civil Competencies in Older Adults with Dementia: Consent Capacity, Financial Capacity, and Testamentary Capacity, in Forensic Neuropsychology: A Scientific Approach 401-37* (G. J. Larrabee ed., 2d ed., 2011)). Widera offers a similar definition: "the ability to independently manage one's financial affairs in a manner consistent with personal self-interest." Eric Widera et al., *Finances in the Older Patient With Cognitive Impairment: "He Didn't Want Me to Take Over," 305(7) [J]AMA 698, 705* (Feb. 16, 2011) at 698 (citing Daniel C. Marson et al., *Financial Capacity, in 1 Encyclopedia of Psychology and the Law 313-16* (Brian L. Cutler ed., 1st ed. 2008)).
- 10 SEC, *Investor Bulletin and Consumer Advisory: Planning for Diminished Capacity and Illness* (Jun. 1, 2015), https://www.sec.gov/oiea/investor-alerts-bulletins/ib_illness.html (last modified Feb. 6, 2017).
- 11 U.S. Gov't Accountability Off., GAO-11-208, *Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse* (2011) at 12, <https://www.gao.gov/new.items/d11208.pdf> (stating the GAO was referring to elder abuse in general, not necessarily financial exploitation in particular).
- 12 See *supra* note 7.
- 13 See SEC et al., "Protecting Senior Investors: Compliance, Supervisory, and Other Practices Used by Financial Services Firms in Serving Senior Investors" (Sept. 22, 2008), <http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf>.
- 14 SEC Office of Compliance Inspections and Examinations et al., "Protecting Senior Investors: Compliance, Supervisory, and Other Practices Used by Financial Services Firms in Serving Senior Investors; 2010 Addendum" (Aug. 13, 2010), <https://www.sec.gov/investor/seniors/seniorreportfinal2010.pdf>.
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- 17 A first principle guiding the work of the Division of Enforcement a focus on protecting the interests of the proverbial Main Street, or retail, investor. More than half of the stand-alone enforcement actions brought by the SEC in fiscal year 2018 involved wrongdoing against retail investors. See SEC, Division of Enforcement, *2018 Annual Report* (Nov. 2, 2018), at 6 <https://www.sec.gov/files/enforcement-annual-report-2018.pdf>.
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- 24 See Press Release 2018-51, "SEC Charges Prominent Pastor, Financial Planner in Scheme to Defraud Elderly Investors" (Mar. 30, 2018), <https://www.sec.gov/news/press-release/2018-51>.
- 25 SEC, Press Release 2017-235, "SEC Charges Operators of \$1.2 Billion Ponzi Scheme Targeting Main Street Investors," (Dec. 21, 2017), <https://www.sec.gov/news/press-release/2017-235>.
- 26 *Id.*
- 27 See Press Release 2017-124, "SEC Announces Charges in Massive Telemarketing Boiler Room Scheme Targeting Seniors" (July 12, 2017), <https://www.sec.gov/news/press-release/2017-124>.
- 28 *Id.*
- 29 *Id.*

- 30 For more on FinCen and efforts to combat elder financial exploitation, see CFTC et al., “Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation” (Aug. 30, 2017), https://www.fincen.gov/sites/default/files/2017-08/8-25-2017_FINAL_CFPB%2BTreasury%2BFinCEN%20Joint%20Memo.pdf.
- 31 See CFTC Office of Financial Protection for Older Americans, *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends* (Feb. 2019), https://files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf.
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- 33 See *supra* note 7.
- 34 *Id.*
- 35 *Id.*
- 36 *Id.* (“The proposed rule change would also require a member that anticipates placing a temporary hold pursuant to the Rule to develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of the Rule.”)
- 37 See <http://serveourseniors.org/about/policy-makers/nasaa-model-act/update/> (last accessed May 2, 2019). One state (Vermont) adopted securities regulations, while all the other states adopted laws.
- 38 For more on the Model Act and subsequent state actions, see <http://serveourseniors.org/about/policy-makers/nasaa-model-act/> (last accessed May 1, 2019) [hereinafter “Model Act”].
- 39 12 U.S.C. § 3423.
- 40 *Id.* (requiring firms, as a condition to qualify for the safe harbor, 1) to offer employees “training on how to identify and report the suspected exploitation of a senior citizen internally and, as appropriate, to government officials or law enforcement authorities, including common signs that indicate the financial exploitation of a senior citizen and 2) to “discuss the need to protect the privacy and respect the integrity of each individual customer of the covered financial institution”).
- 41 15 U.S.C. § 80a–22(e).
- 42 Investment Company Institute, Request for No-Action Relief (May 30, 2018), <https://www.sec.gov/divisions/investment/noaction/2018/investment-company-institute-060118-22e-incoming.pdf>.
- 43 *Id.* at 5.
- 44 SEC Division of Investment Management, Response of the Chief Counsel’s Office (June 1, 2018), <https://www.sec.gov/divisions/investment/noaction/2018/investment-company-institute-060118-22e.htm> (stating: “Based on your facts and representations, we would not recommend enforcement action to the SEC against a mutual fund or its SEC-registered transfer agent under Section 22(e) of the Act if, in accordance with the terms and conditions described in your letter, the transfer agent, acting on behalf of the mutual fund, temporarily delays for more than seven days the disbursement of redemption proceeds from the mutual fund account of a Specified Adult held directly with the transfer agent based on a reasonable belief that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted. This response expresses our views on enforcement action only and does not express any legal conclusions on the questions presented.”)
- 45 For more, see *supra* note 2 at 1.
- 46 See *supra* note 6, at 1.
- 47 See *supra* note 19.
- 48 Yufan Huang & Alan Lawitz, Off. of Children & Family Serv., *The New York State Cost of Financial Exploitation Study* 32 (2016).
- 49 See *supra* note 2 at 10.
- 50 Amendment to Rule 4512, “Customer Account Information,” requires firms to make reasonable efforts to obtain the name and contact information for a trusted contact person when a retail customer’s account is opened and when the account information is updated. The rule applies to individual clients, not institutional investors.
- 51 See *supra* note 7 at 10,060–10,061.
- 52 See *supra* note 38 at Section 5, “Third-Party Disclosures.”
- 53 See *supra* note 40 (requiring firms, as a condition to qualify for the safe harbor, 1) to offer employees “training on how to identify and report the suspected exploitation of a senior citizen internally and, as appropriate, to government officials or law enforcement authorities, including common signs that indicate the financial exploitation of a senior citizen and 2) to “discuss the need to protect the privacy and respect the integrity of each individual customer of the covered financial institution”).



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