

NATIONAL SENIOR INVESTOR INITIATIVE

A Coordinated Series of Examinations

*The SEC's Office of Compliance Inspections and
Examinations and FINRA*



Table of Contents

Executive Summary	2
Background on the Senior Investor Initiative	3
Securities Purchased by Senior Investors	6
Training	8
Use of Senior Designations	10
Marketing and Communications	12
Account Documentation	16
Suitability	18
Disclosures	21
Customer Complaints	24
Supervision	27
Conclusion	32
Appendix A – Reference Material for Firms	33
Appendix B – Description of Securities	38
Endnotes	40

Executive Summary

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

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

Questions concerning this report may be directed to:

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

Background on the Senior Investor Initiative

Introduction

The “Baby Boomers,” those born between 1946 and 1964, began turning 65 in 2011. According to the most recent U.S. Census Bureau data, over 41 million people living in the United States, or more than 13% of the population, were 65 or older in 2011.² Moreover, the number of seniors living in the United States will increase dramatically in the future. For example, the number of people aged 65 or older is projected to be more than 79 million in 2040, which is over twice as many as in the year 2000.³

Over the past quarter century, this demographic has made dramatic economic gains. Housing has been a key driver of this wealth trend as well as strong market performance during that time period.⁴ The Dow Jones Industrial Average increased from 2,031 points on May 31, 1988 to 16,717 points on May 30, 2014, a gain of nearly 723%.⁵ As the Baby Boomers have begun to retire, they have started to draw from Social Security, savings, retirement accounts, and established home equity. Similar to previous generations, they typically purchase conservative income-producing investments as a source of reliable income streams during retirement.

From 2007 to 2010, however, the U.S. economy experienced its most substantial downturn since the Great Depression.⁶ In response, the Federal Reserve Board took extraordinary steps to help stabilize the U.S. economy and financial system, which included reducing interest rate levels. One result of this economic downturn and the subsequent dramatic fall in interest rates was the significant corresponding decrease in the rate of return on liquid deposits (savings accounts), time deposits (certificates of deposit or “CDs”), and bonds (treasury and municipal). As a result, many senior investors have seen a significant reduction in the income streams on which they traditionally have depended during retirement.

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

Prior Regulatory Initiatives

In September 2007, OCIE and the North American Securities Administrators Association (“NASAA”) worked together with the National Association of Securities Dealers (“NASD”) and the New York Stock Exchange Member Regulation Inc. (now combined as FINRA) on a

collaborative initiative that included three components: active investor education and outreach to seniors and those nearing retirement age, targeted examinations to detect abusive sales tactics aimed at seniors, and aggressive enforcement of securities laws in cases of fraud against seniors.⁷

As a follow-up to the 2007 report, OCIE, FINRA, and NASAA collectively published a report in September of 2008⁸ outlining practices that financial services firms can use to strengthen their policies and procedures for serving investors as they approach and enter retirement. The 2008 report describes new processes and procedures aimed at addressing common issues associated with interactions with senior investors that were implemented by some firms.

In August 2010, OCIE, FINRA, and NASAA published an addendum⁹ to update the 2008 report on business practices regarding senior investors. The addendum includes feedback from firms that participated in the prior review and additional practices they may have implemented. The addendum focuses on specific, concrete steps that firms were taking or practices they had implemented since the prior review to identify and respond to issues that are common in working with senior investors. The addendum also includes other practices that staff identified in various industry publications. In addition, the addendum encourages financial services firms to strengthen their policies and procedures for serving senior investors as these investors approach and enter retirement.

Regulatory Guidance

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

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

Also in 2013, eight government agencies issued joint guidance to financial institutions regarding reporting suspected financial exploitation of older adults.¹² This guidance discusses the obligations of firms relating to privacy protections for their investors and the variety of exceptions in cases of suspected financial abuse. In addition, the guidance enumerates possible signs of financial exploitation in older adults that might trigger the filing of a suspicious activity report (“SAR”). A SAR is a document that financial institutions must file with the Financial

Crimes Enforcement Network following, among other things, a suspected incident of money laundering or fraud.¹³

OCIE/FINRA National Senior Investor Initiative

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

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

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

In 2015, OCIE and FINRA examination staff will continue to review matters of importance to senior investors.¹⁴

Securities Purchased by Senior Investors

Examination Observations

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

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

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

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

Conclusion

Mutual funds, variable annuities, and equities were most often purchased by senior investors. More complex securities such as UITs, REITs, alternative investments, and structured products were also purchased by seniors, but such purchases were less frequent. Due to the wide-ranging

nature of these investment products, it is critical that senior investors are fully informed of the features of any security they are purchasing, including the potential return and associated risks.

Training

Discussion of Relevant Rules

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

Examination Observations

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

- Ensuring that clients, specifically seniors, were fully informed of the risks involved with each product. For example, one firm trained its representatives on its requirements to evaluate the client's understanding of the recommended product and to confirm completeness of all mandatory acknowledgment forms and disclosures.
- How investment needs change as investors age. For example, one firm's training emphasized that not all products were suitable for the same type of investors. Another firm instructed representatives that they must consider various factors when making recommendations to senior investors, such as current employment, primary expenses, sources of income, fixed or anticipated expenses, liquidity, and investment goals.
- Escalation steps in the event that a representative notices signs of diminished capacity or elder financial abuse. Approximately 13% of the firms specifically told their representatives to notify compliance or supervisory personnel if they suspected diminished capacity or elder financial abuse. For example, training material instructed representatives to contact compliance with a problematic or suspicious situation and to document meetings, conversations, or other exchanges with relatives and others about the situation if the representative had noticed signs of diminished capacity. One firm provided a training module focused on reporting suspected senior financial abuse. The module, among other things, encouraged the firm's representatives to ask questions, confirm who had authorization on the account, contact the at-risk senior (separately from the suspected abuser), and escalate the matter to the appropriate supervisor. Some tips or

red flags which would trigger escalation included atypical or unexplained withdrawals, drastic shifts in investment style, and changes in beneficiaries listed in the IRA.

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

Conclusion

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

Notable Practices: Training

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

Use of Senior Designations

Discussion of Relevant Rules

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

Examination Observations

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

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

- 64% of the designations that firms allowed representatives to use required continuing education for the financial professional to maintain the title.
- 44% of the allowed designations were not recognized by any independent accrediting organization.

- Almost 30% of the firms prohibited titles or designations if the corresponding curriculum and continuing education requirement did not meet certain specified standards.

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

Conclusion

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

Notable Practices: Senior Designations

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

Marketing and Communications

Discussion of Relevant Rules

FINRA Rule 2210 includes requirements for a firm's communications with the public, including retail communications. Rule 2210(a)(5) defines retail communications to include any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(b)(1)(A) requires an appropriately registered principal to approve most retail communications before the earlier of its use or filing with FINRA's Advertising Regulation Department.¹⁹ In addition, Rule 2210(c) requires broker-dealers to file certain retail communications with FINRA's Advertising Regulation Department. For example, with certain exceptions, broker-dealers must submit all retail communications concerning registered investment companies within ten business days of first use.

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

- All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.
- No member may make any false, exaggerated, unwarranted, promissory, or misleading statement or claim in any communication. No member may publish, circulate, or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.
- Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.
- Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield inherent to investments.
- Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.
- Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion, or forecast.

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

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

Examination Observations

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

With regard to radio, at least two firms permitted their representatives to host shows to broadly market the services they provide to investors, often discussing themes that may be appealing to senior investors such as retirement. Staff identified potential rule violations such as misleading advertisements and the failure to properly supervise the content of radio shows.

With regard to seminars, approximately half of the firms permitted representatives to host educational seminars covering a wide variety of investment topics, and at least five firms prohibited representatives from hosting seminars. Many seminars appeared designed to target senior investors, as well as middle-aged investors and investors approaching retirement. For example, some seminars focused on investors who were still working but were transitioning from the accumulation of wealth stage to retirement. Others were designed to discuss possible strategies regarding long-term retirement planning techniques that consider changes to income and when to start drawing from annuities, Social Security, pensions, and other defined benefit plan income.

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

- Some firms required a designated supervisor to review and pre-approve all materials related to the proposed seminar.
- Some firms stated that invitations to seminars could not imply that products would be sold during the seminar. Further, these firms required supervisors, or appropriate designees, to attend seminars periodically to ensure compliance with all regulatory and firm requirements.
- At least two firms established documentation standards for seminars. For example, some of the procedures required that representatives maintain documentation on the date(s) of the seminar, the title of the seminar, the seminar content, name(s) of firm representative hosting the seminar, the date the material for the seminar was submitted for approval, and the date the supervisor approved the seminar.
- Other firms required representatives to distribute evaluation forms to attendees to solicit feedback. Supervisors were then required to review these forms to help identify any issues of regulatory concern that may violate firm policies or the content requirements of FINRA Rule 2210.

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

Conclusion

Retirement planning is often a dominant theme in retail communications that firms use to attract senior investors. Long-term care insurance, wealth preservation, and wealth transfer also are

common senior investor-related themes. These communications take a variety of forms including brochures, print and electronic advertisement, newspaper columns, radio and television commercials, and seminars. Firms appeared to generally comply with content standards and rules requiring firms to have written policies and procedures, although staff noted a few instances of potentially misleading advertisements and the potential failure to properly supervise the content of radio shows as well as the potential failure to comply with a firm's written supervisory procedures for seminar materials.

Notable Practices: Marketing and Communications

- Having written supervisory procedures that require supervisory approval to participate in unscripted seminars and other forms of public appearances that are not subject to the principal pre-use approval requirements of FINRA Rule 2210(b)(1)(A).
- Distributing evaluation forms to seminar attendees to solicit feedback which are then reviewed by a supervisor to identify any issues of concern that may violate firm policies or the content requirements of FINRA Rule 2210(d)(1).

Account Documentation

Discussion of Relevant Rules

Both the SEC and FINRA have rules regarding the minimum information that firms must obtain and maintain for each customer account. Exchange Act Rule 17a-3(a)(17)(i)(A) requires broker-dealers to make and keep current a record for each customer account that includes the customer's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record must indicate whether it has been signed by the associated person responsible for the account, if any, and approved or accepted by a principal of the member, broker or dealer. Rule 17a-3(a)(17)(i)(B) requires firms to furnish each customer with a copy of his or her account record within 30 days of opening the account and at least every 36 months thereafter. Furnishing account records is an important tool to help customers and firms promote the accuracy of investment profiles. This is of particular importance to senior investors due to changing liquidity needs and evolving objectives and risk tolerances, such as when investors move from accumulating assets to using assets to provide income during retirement.²⁰ Rule 17a-3(a)(17)(i)(B) also requires firms to notify customers of name or address changes of the customer or owner and to send updated customer account records reflecting changes in the account's investment objectives within 30 days.

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

Additionally, FINRA Rule 2090 requires firms to use reasonable diligence, in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and the authority of each person acting on behalf of such customer. FINRA has provided a "New Account Application Template" or voluntary model brokerage account form that firms may use as a resource when they design or update their new account forms.²¹

Examination Observations

Staff reviewed the types of information firms collected when opening accounts for senior investors to assess compliance with applicable rules. Approximately 98% of the firms collected

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

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

Conclusion

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

Notable Practices: Account Documentation

- Obtaining more detailed customer account information than what is required by the applicable rules. For example, firms obtained detailed expense information from customers and calculated both short and intermediate-term expenses, among others.
- Using automated supervisory alerts to help ensure that updated customer investment profiles accurately reflect changes in customers' personal and financial circumstances.

Suitability

Discussion of Relevant Rules

Broker-dealers generally have an obligation to recommend only those specific investments or overall investment strategies that are suitable for their customers. The concept of suitability appears in specific SRO rules and has been interpreted as an obligation under the antifraud provisions of the federal securities laws.²² FINRA Rule 2111 requires firm representatives to have a reasonable basis to believe that a recommended transaction or investment strategy is suitable for the customer based on the information obtained through reasonable diligence to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the representative in connection with the recommendation.

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

Examination Observations

Staff analyzed the suitability of recommendations of variable annuities, alternative investments, mutual funds, structured products, REITs, equities, and municipal bonds to senior investors based on a variety of factors, including the appropriateness of exchanges, excessive fees, concentration of liquid net worth, short investment time horizon, and age.

Staff found evidence indicating that 34% of the firms made one or more potentially unsuitable recommendations of variable annuities. One of the most prevalent factors contributing to questions about these recommendations was the appropriateness of exchanges, especially in light of fees. For example, one firm representative displayed a consistent pattern of recommending that investors exchange variable annuity contracts purchased within the previous 36 months. In one of those cases, an investor funded the purchase of a new contract by selling a contract he had purchased less than three years earlier, incurring a surrender charge, a loss of death benefit, and an increase in fees. In this case, the cost and commissions charged with the new contract along with surrender charges, increased fees, and a new surrender schedule appeared to outweigh the benefits, given the investor's age.

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

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

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

- 9% made potentially unsuitable recommendations of mutual funds. In one instance, staff believed that recommendations of C shares were potentially unsuitable because the customer's investment horizon was eleven years or more, the investment objective was income, and the purchase of Class A shares in the same fund would have qualified the customer for breakpoints.
- 7% made potentially unsuitable recommendations for sales of structured notes and market-linked CDs, which often lack liquidity, carry complex risks such as default risk, and are difficult to value. It appeared that firm representatives failed to consider investors' risk tolerances, investment concentrations, the illiquid nature of these securities, and investors' age and time horizon when assessing suitability. For example, representatives made multiple recommendations for market-linked CDs, which exceeded maximum firm thresholds of investable assets and product concentrations. One such recommendation was made to an 87 year-old investor with a moderate risk tolerance, an investment objective of growth, and investment experience that was limited to mutual

funds. The product would not become liquid until the investor was 94 years old, and the investment tied up a significant percentage of the investor's assets.

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

Conclusion

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

Notable Practices: Suitability

- Adopting policies and procedures addressing suitability risks specific to senior investors.
- Requiring firm representatives to memorialize in firm computer systems conversations between the representatives and senior investors relating to the recommendations.
- Drafting product applications that require firm representatives to consider and document crucial investment profile information.
- Establishing strict firm product concentration guidelines for senior investors.

Disclosures

Discussion of Relevant Rules

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

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

Examination Observations

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

Staff noted that 68% of the firms had sold variable annuities, as one of the top five revenue-generating products, to their investors. In order to comply with the additional requirements in FINRA Rule 2330, many firms adopted a variable annuity disclosure form to evidence collection of the information required by the rule. This disclosure form described the features of the particular variable annuity such as mortality and expense fees, surrender fees and period, liquidity needs of the investor, all riders and account benefits from the variable annuity, and general information about the variable annuity. The majority of firms required their representatives to fill out and submit this form to supervisory officers prior to the variable annuity transaction.

In addition, firms often required customers to sign the disclosures provided to evidence receipt. These disclosures included the variable annuity application, acknowledgement of receipt of the prospectus, state forms when required,²³ a schedule stating commission percentage breakdown and average fund expense ratio breakdown, mortality and expense fees, surrender fees and years remaining if applicable, and average fund expense ratio. When the variable annuity investment was a significant concentration of the customer's assets, at least two firms required customers to sign a disclosure stating their awareness of the high concentration and their sufficiency of liquid assets to cover expenses. In cases where the investor was exchanging one variable annuity for another, almost 10% of firms provided disclosures that included a variable annuity transfer and exchange form, disclosure of surrender costs versus the benefits of the new products, a product comparison for the old and new products, and the total expenses of switch transactions.

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

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

Conclusion

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

Notable Practices: Disclosures

- Requiring a customer signature on a disclosure form indicating that the customer received a prospectus when purchasing new open-end mutual funds.
- Requiring an explanation of the tax ramifications and alternative investment possibilities for all customers that purchase a variable annuity in an individual retirement account.
- Providing a detailed description of registered representative compensation (both direct and indirect) for each product sold on their website.
- Providing one comprehensive disclosure form that includes simple definitions for industry nomenclature and the schedule of fees and expenses related to specific securities.

Customer Complaints

Discussion of Relevant Rules

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

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

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

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

report the following under Rule 4530(d): any written customer complaint reported under Rule 4530(a)(1)(B), any written grievances by customers with whom the member has engaged in securities activities that involves the member or a person associated with the member, and any securities-related written grievance by customers with whom the member has sought to engage in securities activities that involves the member or a person associated with the member.

Examination Observations

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

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

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

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

Conclusion

Staff observed that all of the firms examined were preserving and reporting customer complaints as required by the FINRA rules, but some had difficulty aggregating the number of senior

complaints in their system. The most common complaint themes among senior investors were allegations of poor service and unreasonably high fees.

Notable Practices: Customer Complaints

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

Supervision

Discussion of Relevant Rules

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

Paragraph (a) of FINRA's rule on supervision in effect at the time of the examinations (NASD Rule 3010)²⁴ required each member to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that was reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Rule 3010(a) also clarified that the final responsibility for proper supervision rested with the member. Rule 3010(b) required each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engaged and to supervise the activities of registered representatives, registered principals, and other associated persons that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Rules of NASD.

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

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

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

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

Examination Observations

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

A majority of firms' procedures addressed general senior-related supervision, but 11% of firms specifically cited or included some of the themes from FINRA Regulatory Notice 07-43²⁵ in their written supervisory procedures. This Regulatory Notice addresses firm obligations relating to senior investors and highlights industry best practices, suitability concerns, communications with the public (including use of designations and seminars), and dealing with investors with diminished capacity and occurrences of suspected financial abuse. Topics from the Regulatory Notice addressed in the firms' procedures include the following:

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

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

- dealing with investors who exhibit diminished capacity and other cognitive impairment;
- qualified plan rollovers;
- senior investors' appetite for increasing yield;
- current and future prospects for employment;
- sources of income and whether it is fixed or will be in the future;
- primary expenses including whether the customer still has a mortgage;
- income needed to meet fixed or anticipated expenses;
- savings for retirement and how they are invested;

- health care insurance and future needs to fund health care costs;
- rapid changes to financial profiles based on life events;
- third-party emergency contact information and permission to contact the third party in the event an issue requires clarification; and
- income and estate tax liabilities.

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

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

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

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

variable annuities unless the firm representative documented additional written justifications for the purchases and the centralized review group approved the transaction based on its suitability.

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

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

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

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

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

Customizing an automated supervisory system enabled firms to react to changing trends within the firm and industry by prioritizing their surveillance programs accordingly.

Conclusion

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

Notable Practices: Supervision

- Establishing firm policies that address FINRA Regulatory Notice 07-43, which discusses enhanced suitability practices, communications, dealing with investors suffering from diminished capacity, and occurrences of suspected financial abuse.
- Maintaining product suitability guidelines for senior investors purchasing complex or alternative products such as variable annuities, equity-indexed annuities, REITs, and options.
- Using a centralized supervisory review group to approve transactions and new accounts.
- Using automated systems and tools that are integrated with firm's branch supervisory review system and compliance departments.

Conclusion

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

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

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

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

Appendix A – Reference Material for Firms

Examination Priorities for 2015

- OCIE, SEC, Examination Priorities for 2015
<http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2015.pdf>
- FINRA, 2015 Regulatory and Examination Priorities Letter
<http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602239.pdf>

Securities

- Office of Investor Education and Advocacy (“OIEA”), SEC, Mutual Funds: A Guide for Investors
<http://investor.gov/sites/default/files/mutual-funds.pdf>
- OIEA, SEC Investor Bulletin: Variable Annuities – An Introduction (February 2014)
http://www.sec.gov/investor/alerts/ib_var_annuities.pdf
- FINRA Investor Alert: Public Non-Traded REITS – Perform a Careful Review Before Investing
<http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/REITS/P124232>

Training

- FINRA Rule 1250: Continuing Education Requirements
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=10204

Senior Designations

- OIEA SEC-NASAA Investor Bulletin: Making Sense of Financial Professional Titles (September 2013)
http://www.sec.gov/investor/alerts/ib_making_sense.pdf
- OIEA, SEC Investor Information, “Senior” Specialists and Advisors: What You Should Know About Professional Designations
<http://www.sec.gov/investor/pubs/senior-profdes.htm>
- NASD Rule 3010: Supervision (superseded by FINRA Rules 3110 and 3170)
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11763
- FINRA Rule 3110: Supervision (there are revisions that will be effective July 1, 2015)
http://finra.complinet.com/en/display/display_main.html?rbid=2403&record_id=15446

- FINRA Regulatory Notice 11-52: Senior Designations (November 2011)
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125092.pdf>
- FINRA, Senior Designations
<http://www.finra.org/industry/issues/seniors/p124734>
- CFPB, Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risks (April 2013)
http://files.consumerfinance.gov/f/201304_CFPB_OlderAmericans_Report.pdf
- North American Securities Administrators Association, Regulators Urge Investors to Carefully Check Credentials of ‘Senior Specialists’ (December 2005)
<http://www.nasaa.org/7684/regulators-urge-investors-to-carefully-check-credentials-of-senior-specialists/>

Marketing and Communications

- FINRA Rule 2210: Communications with the Public
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=10648
- Exchange Act Rule 17a-4, Records to be preserved by certain exchange members, brokers and dealers
http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:4.0.1.1.1&rgn=div5#se17.4.240_117a_64

Account Documentation

- Exchange Act Rule 17a-3, Records to be made by certain exchange members, brokers and dealers
http://www.ecfr.gov/cgi-bin/text-idx?SID=1f5fa29b3dd8174ea183036757d3d99a&node=pt17.4.240&rgn=div5#se17.4.240_117a_63
- FINRA Rule 2090: Know Your Customer
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9858
- FINRA Rule 4512(a)(1): Customer Account Information
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9958
- FINRA New Account Application Template
<http://www.finra.org/Industry/Tools/P117268>

Suitability

- OIEA, SEC Investor Information, Suitability
<http://www.sec.gov/answers/suitability.htm>

- OIEA, SEC Investor Information, SEC Center for Complaints and Enforcement Tips
<http://www.sec.gov/complaint.shtml>
 - Tips, Complaints and Referrals Portal
<https://denebleo.sec.gov/TCRExternal/disclaimer.xhtml>
- FINRA Rule 2111: Suitability
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9859
- FINRA Rule 2330: Members' Responsibilities Regarding Deferred Variable Annuities
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=8824
- FINRA Regulatory Notice 13-31: Suitability (September 2013)
<https://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p351220.pdf>

Disclosures

- Section 17(a)(2) of the Securities Act
<http://www.sec.gov/about/laws/sa33.pdf>
- Section 5 of the Securities Act
<http://www.sec.gov/about/laws/sa33.pdf>
- FINRA Rule 2010: Standards of Commercial Honor and Principles of Trade
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=5504
- FINRA Rule 2330: Members' Responsibilities Regarding Deferred Variable Annuities
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=8824

Customer Complaints

- Exchange Act Rule 17a-3, Records to be made by certain exchange members, brokers and dealers
http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:4.0.1.1.1&rgn=div5#se17.4.240_117a_64
- Exchange Act Rule 17a-4, Records to be preserved by certain exchange members, brokers and dealers
http://www.ecfr.gov/cgi-bin/text-idx?SID=8e0ed509ccc65e983f9eca72ceb26753&node=17:4.0.1.1.1&rgn=div5#se17.4.240_117a_64
- FINRA Rule 4513: Records of Written Customer Complaints
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9959
- FINRA Rule 4530: Reporting Requirements
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9819

Supervision

- Section 15(b)(4)(E) of the Exchange Act
<http://www.sec.gov/about/laws/sea34.pdf>
- FINRA Rule 2330(d): Members' Responsibilities Regarding Deferred Variable Annuities (Supervisory Procedures)
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=8824
- FINRA Rule 2360(b)(20)(A): Options (Duty to Supervise)
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=6306
- NASD Rule 3010: Supervision (superseded by FINRA Rules 3110 and 3170)
http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11763
- FINRA Rule 3110: Supervision (there are revisions that will be effective July 1, 2015)
http://finra.complinet.com/en/display/display_main.html?rbid=2403&record_id=15446
- NASD Notice to Members 05-50: Member Responsibilities for Supervising Sales of Unregistered Equity-Indexed Annuities (August 2005)
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p014821.pdf>

Additional Resources

- SEC Seniors Summit, in coordination with FINRA, NASAA and AARP (September 2007) <http://www.connectlive.com/events/secseniorssummit/>
- SEC-OCIE, NASAA, and FINRA, Protecting Senior Investors: Report of Examinations of Securities Firms Providing "Free Lunch" Sales Seminars (September 2007)
<http://www.sec.gov/spotlight/seniors/freelunchreport.pdf>
- SEC-OCIE, NASAA, and FINRA, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors (September 2008)
<http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf>
- SEC-OCIE, NASAA, and FINRA, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors: 2010 Addendum (August 2010)
<http://www.sec.gov/spotlight/seniors/seniorspracticesreport081210.pdf>
- SEC, Senior Investors <http://www.sec.gov/divisions/marketreg/seniorinvestors.htm>
- SEC Charges Operators of Boiler Room Scheme Targeting Seniors to Invest in Football-Related Scam
<http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539842427>
- FINRA Regulatory Notice 07-43: Senior Investors (September 2007)
http://www.complinet.com/file_store/pdf/rulebooks/NASD07-43.pdf
- FINRA Regulatory Notice 08-27: Misleading Communications About Expertise (May 2008)

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p038522.pdf>

- NASD Notice to Members 04-89: NASD Alerts Members to Concerns When Recommending or Facilitating Investments of Liquefied Home Equity (December 2004)
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p012714.pdf>
- FINRA Investor Alert: “Free Lunch” Investment Seminars – Avoiding the Heartburn of a Hard Sell
<http://www.finra.org/investors/protectyourself/investoralerts/fraudsandscams/p036745>
- FINRA Investor Alert: Seniors Beware: What You Should Know About Life Settlements
<http://www.finra.org/web/groups/investors/@inv/@protect/@ia/documents/investors/p125848.pdf>
- FINRA Investor Alert: Reverse Mortgages: Avoiding a Reversal of Fortune
<http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/RetirementAccounts/P038113>
- FINRA E-Learning Courses
<http://www.finra.org/Industry/Education/OnlineLearning/E-learningCourses/index.htm>
 - Senior Investor Issues: Diminished Decisional Capacity
 - Senior Investor Suitability Considerations
 - Supervisory Considerations for Working with Seniors

Appendix B – Description of Securities

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

- (1) Mutual funds pool investor money to purchase securities. Investors may purchase shares in the fund, from the fund itself, or through a broker for the fund. Open-end mutual funds are a type of investment company. They must register under the Investment Company Act of 1940 and issue securities under the Securities Act. Each mutual fund must deliver a prospectus to customers under Section 10(a) of the Securities Act. Risks related to mutual funds may include market risk and the risk derived from its underlying assets. Different types of mutual funds may also be subject to different types or levels of volatility, fees, and expenses.²⁶
- (2) Variable annuities are securities regulated by the SEC.²⁷ They are contracts between an investor and an insurance company under which the investor makes a lump sum payment or a series of payments in exchange for periodic payments by the insurer at some agreed upon future date.²⁸ Variable annuities offer certain potential advantages to investors. For example, they are a tax-deferred investment, offer a range of investment options, and often provide riders such as a guaranteed death benefit or other guarantees. On the other hand, variable annuities may have a surrender period that starts after the initial purchase and may last six to eight years or sometimes as long as ten years. If funds are withdrawn during the surrender period, the insurer will assess a surrender charge, typically a percentage of the amount withdrawn, which declines gradually over the period.
- (3) Equities are a type of security that gives holders a share of ownership in a company.²⁹ Advantages to holding equities may include income from dividends, growth, and liquidity. Equities bear risk such as the potential realized or unrealized losses from market fluctuations.
- (4) Fixed income investments include individual bonds and market-linked CDs. These investments may provide payments of a fixed amount on a fixed schedule to the owner for the duration of the investment. Although the consistency in the stream of income may be attractive, there are risks associated with each type of investment. Some risks may include market risk, credit risk, and default risk.³⁰
- (5) A UIT is a type of investment company that issues redeemable securities; makes a one-time public offering of a specific, fixed number of units; has a termination date that is established when it is created; does not actively trade its investment portfolio; and does not have a board of directors, corporate officers, or an investment adviser to render advice during the life of the trust. The amount of capital invested determines the proportionate share of principal and interest the investor receives from the trust. A UIT may buy back outstanding shares of the trust at the current net asset value, and shares may be redeemed at any time. UITs may carry risks such as illiquidity or inflation risk as well as risks derived from the underlying assets.³¹

- (6) An ETF is an investment company that is traded like equity securities on an exchange. Although classified as an open-end company or UIT, it differs in many respects. For example, an ETF does not sell individual shares; investors usually purchase creation units with a basket of securities and subsequently sell those shares on the secondary market or sell creation units back to the ETF. An ETF holds assets such as equities, commodities, or bonds and trades close to its net asset value over the course of the trading day. Most ETFs track an index, a commodity, or a basket of assets such as an equity index or bond index. ETFs seek to achieve their stated objectives on a daily basis. Performance over longer periods of time may differ significantly from the index performance over those time periods. Some ETFs pursue active management strategies and publish their portfolio holdings on a daily basis. These products share many of the same risks as mutual funds.³²
- (7) REITs are corporations, trusts, or associations that own and usually operate income-producing real estate or real estate-related assets. REITs provide investors with a way to earn a share of income produced from commercial real estate without actually owning commercial real estate. Investors can purchase shares of REITs through a broker-dealer, and these shares typically offer high yields. Many REITs are registered with the SEC and are publicly traded on a stock exchange, offering investors a liquid investment in income producing real estate or real estate-related assets. There also are REITs that are registered with the SEC but are not publicly traded on an exchange. These non-traded REITs are generally illiquid investments with limited ability to redeem shares because there is no public market and potentially with high fees associated with their sale.³³
- (8) The definition of an alternative investment can vary, as they generally cannot be directly classified as traditional securities such as stocks or bonds. They can include exchange-traded notes, hedge funds, and private placements. Alternative investments can help investors diversify exposure away from mainstream markets (e.g., because of their low correlation coefficients with both equities and fixed income). Potential risks include difficulty in valuation, potentially high purchase costs and large initial investment, limited historical data, lack of liquidity, and complexity.³⁴
- (9) Structured securities products include structured notes and other market-linked securities, reverse convertible notes, principal-protected notes, and collateralized debt obligations. Structured products are not defined in the federal securities laws. They are sold in the retail market and usually consist of a traditional security combined with one or more other asset classes, typically a bond and an option component. As a result, structured products typically have some form of option or embedded financial derivative exposure. Structured products may offer investors varying levels of principal protection, high interest payments, leveraged exposure to the underlying asset class, and a fixed maturity date (in most cases), and they may seek to achieve a highly customized risk-return objective. Structured products, however, often carry complex risks, including default risk, lack of liquidity, lack of transparency, and valuation difficulty.³⁵

Endnotes

- ¹ The views expressed herein are those of the staff of OCIE, in consultation with other staff of the Securities and Exchange Commission (“SEC” or “Commission”) including the Division of Trading and Markets and in coordination with FINRA. The Commission has expressed no view on the contents of this report. This document was prepared by the SEC staff, in coordination with FINRA, and is not legal advice.
- ² Administration on Aging Administration for Community Living, U.S. Department of Health and Human Services, A Profile of Older Americans: 2012, page 1 (2012), available at http://www.aoa.gov/Aging_Statistics/Profile/2012/docs/2012profile.pdf.
- ³ Id. at 3.
- ⁴ Richard Fry, D’Vera Cohn, Gretchen Livingston, and Paul Taylor, The Rising Age Gap in Economic Well-being: The Old Prosper Relative to the Young, Pew Research Center, pages 1-2 (November 7, 2011), available at <http://www.pewsocialtrends.org/files/2011/11/WealthReportFINAL.pdf>.
- ⁵ Dow Jones Industrial Average, available at <http://finance.yahoo.com/echarts?s=%5EDJI>.
- ⁶ Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances, Federal Reserve Bulletin, Vol. 98, No. 2 (June 2012), page 4, available at <http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf>.
- ⁷ Office of Compliance Inspections and Examinations Security and Exchange Commission, North American Securities Administrators Association, Financial Industry Regulatory Authority, Protecting Senior Investors: Report of Examinations of Securities Firms Providing “Free Lunch” Sales Seminars, page 2 (September 2007), available at http://www.sec.gov/spotlight/seniors/free_lunch_report.pdf.
- ⁸ Securities and Exchange Commission’s Office of Compliance Inspections and Examinations, North American Securities Administrators Association, and Financial Industry Regulatory Authority, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors (September 22, 2008), available at <http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf>.
- ⁹ U.S. Securities and Exchange Commission’s Office of Compliance and Inspections and Examinations, North American Securities Administrators Association, and Financial Industry Regulatory Authority, Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors 2010 Addendum (August 12, 2010), available at <http://www.sec.gov/spotlight/seniors/seniorspracticesreport081210.pdf>.
- ¹⁰ FINRA Regulatory Notice 11-52: FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designation (November 2011), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125092.pdf>.
- ¹¹ SEC-NASAA Investor Bulletin: Making Sense of Financial Professional Titles (September 2013), available at http://www.sec.gov/investor/alerts/ib_making_sense.pdf.
- ¹² Board of Governors of the Federal Reserve System, Commodity Futures Trading Commission, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, and Securities and Exchange Commission, Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults (2013), available at <http://www.sec.gov/news/press/2013/elder-abuse-guidance.pdf>.
- ¹³ 12 CFR 208.62.
- ¹⁴ The SEC’s Examination Priorities for 2015 are available at <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2015.pdf>, and FINRA’s 2015 Regulatory and Examination Priorities are available at <http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p602239.pdf>.
- ¹⁵ FINRA, Senior Designations, available at <http://www.finra.org/industry/issues/seniors/p124734>.
- ¹⁶ NASD Rule 3010 (a, b, c, d, and g) has been superseded by FINRA Rules 3110 and 3170. Retired NASD Rule 3010 is available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11763.

¹⁷ See FINRA Regulatory Notice 11-52: FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designation (November 2011), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125092.pdf>.

¹⁸ North American Securities Administrators Association, Regulators Urge Investors to Carefully Check Credentials of ‘Senior Specialists’ (December 12, 2005), available at <http://www.nasaa.org/7684/regulators-urge-investors-to-carefully-check-credentials-of-senior-specialists/>.

¹⁹ FINRA Rule 2210(b)(1)(C) and (b)(1)(D) provide certain exceptions from this requirement. For example, pursuant to FINRA Rule 2210(b)(1)(C), principal review is not required for communications which another broker-dealer filed with FINRA’s Advertising Regulation Department and received a letter from the Department stating that the communication appears consistent with applicable standards. Also, FINRA Rule 2210(b)(1)(D) exempts from prior to use principal review any retail communication that is posted in an online interactive forum so long as the broker-dealer supervises the use of such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(b).

²⁰ Using customer account records that are aged more than 36 months may increase the likelihood of unsuitable recommendations due to potential changes in customers’ personal and financial circumstances.

²¹ The voluntary template was created with input from industry professionals and other regulators to present investor with information in a clear, intuitive format. The template includes instructions and other information presented in plain English, highlights of key disclosures, and incorporation of related investor education information. For additional information, see <http://www.finra.org/Industry/Tools/P117268>.

²² See Section 5(1)(2) of the Guide to Broker-Dealer Registration, Division of Trading and Markets, U.S. Securities and Exchange Commission (April 2008), available at <http://www.sec.gov/divisions/marketreg/bdguide.htm>.

²³ Numerous individual states prescribe specific form requirements for insurance sales. These form templates are developed and distributed by the states to the insurance carriers. The carriers then incorporate and provide the forms to the insurance agencies that offer the product.

²⁴ NASD Rule 3010 (a, b, c, d, and g) has been superseded by FINRA Rules 3110 and 3170. Retired NASD Rule 3010 is available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11763.

²⁵ FINRA Regulatory Notice 07-43: FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers (September 2007), available at http://www.complinet.com/file_store/pdf/rulebooks/NASD07-43.pdf.

²⁶ For additional information, see “Mutual Funds,” available at <http://www.sec.gov/answers/mutfund.htm>.

²⁷ Annuities, such as fixed annuities, are not securities and are thus not regulated by the SEC; they fall under the purview of state insurance regulators.

²⁸ For additional information, see “Variable Annuities,” available at <http://www.sec.gov/answers/varann.htm>.

²⁹ For additional information, see “Stocks,” available at <http://investor.gov/investing-basics/investment-products/stocks#.VNN73zZOmUl>.

³⁰ For additional information, see “Bonds,” available at http://investor.gov/investing-basics/investment-products/bonds#.VL_yozZOnnt.

³¹ For additional information, see “Unit Investment Trusts (UITs),” available at <http://www.sec.gov/answers/uit.htm>.

³² For additional information, see “Exchange-Traded Funds,” available at <http://www.sec.gov/answers/etf.htm>.

³³ For additional information, see “Real Estate Investment Trusts (REITs),” available at <http://www.sec.gov/answers/reits.htm>.

³⁴ For additional information, see “Investor Bulletin: Private Placements Under Regulation D,” available at http://www.sec.gov/oiea/investor-alerts-bulletins/ib_privateplacements.html, and “Hedge Funds,” available at <http://www.sec.gov/answers/hedge.htm>.

³⁵ For additional information, see “Investor Bulletin: Structured Notes,” available at http://www.sec.gov/oiea/investor-alerts-bulletins/ib_structurednotes.html.