

Draft as of May 31, 2022
To be discussed at the June 9, 2022 meeting of the Investor Advisory Committee

**Recommendation of the SEC Investor Advisory Committee to
Better Protect Older Adult Investors**

FINDINGS

During 2021, the SEC’s Investor Advisory Committee (“IAC”) contributed to longstanding efforts by the IAC to identify opportunities for the SEC to do even more to combat financial fraud targeting older adults. In particular, the IAC sponsored a panel discussion on December 2, 2021 about the SEC’s potential role in this arena. The panelists discussed a wide range of issues affecting older and sometimes vulnerable adult investors.

The IAC makes the following findings:

- 1. The United States has an ongoing elder fraud abuse crisis.** With the advent of new technologies and sophisticated criminal enterprises that make financial crimes easier, more and more people in the United States are falling victim.¹ Often, the bad actors target older adults specifically because they typically have more savings, investments, and other resources than younger persons.²
- 2. This crisis is in part a slow-moving financial crisis.** According to one data source, in 2021 alone, older consumers lost at least \$1.03 billion to fraud, scams, and financial exploitation schemes.³ Common sense and experience both indicate that older investors will be less likely to recover financially from the losses than a younger person would, particularly if their loss was significant.
- 3. This crisis is also a health crisis.** For some victims, the emotional consequences of being victimized are worse than the financial loss. They experience levels of shame, deprioritization, and dehumanization, which is, in part, fueled by our habit as a society to place blame and responsibility on victims rather than perpetrators.⁴ Sometimes, the trauma prevents victims from reporting the crime to the proper authorities or even their loved

¹ See U.S. Department of Justice, [Transnational Elder Fraud Strike Force](#).

² See Christopher Cox, [Opening Statement at the Seniors Summit](#) (July 17, 2006). See also Christopher Cox, [Protecting Senior Citizens from Investment Fraud](#) (Sept. 5, 2007) (testimony before the US Senate Special Committee on Aging); [Protecting Senior Investors in Today’s Markets](#) (Sept. 22, 2008).

³ See Federal Trade Commission, [Consumer Sentinel Network Data Book](#) (Feb. 22, 2022).

⁴ See SEC Investor Advisory Committee [meeting dated December 2, 2021](#).

ones, which in turn affects the accuracy of data sources on financial fraud and consumer losses, never mind the ability of the government to address the harm.⁵

- 4. State and federal authorities, as well as their external partners, lack the funding necessary to combat this crisis.** In the United States, there are many state and federal authorities, including state and federal securities regulators, who want to do more to protect investors of all ages from financial fraud. However, authorities presently lack the resources to investigate every allegation. In the case of state securities regulators, they have been trying for over a decade to access additional federal funding to prevent and address elder fraud abuse in their jurisdictions.⁶ Similarly, the SEC has been short-staffed for a while now.⁷ Moreover, the agency relies heavily on free services and advice it receives from external partners, such as the members of the IAC, NASAA, and FINRA, to carry out the work it already does to protect investors of all ages, particularly older adults.
- 5. Separately but relatedly, state and federal authorities, as well as their external partners, lack the tools necessary to combat this crisis.** In the United States, there is no centralized system and database for reporting alleged violations of the law, including financial crimes relating to older adults. Moreover, while there are databases with complaints and other relevant information in them, there is no universal right of access to the information, even for state and federal authorities that are charged with the responsibility of protecting people from investment fraud.⁸
- 6. The SEC could do more to protect older adults.** While the SEC has a long, rich history of protecting investors of all ages from financial fraud, the SEC itself is the first to acknowledge that it could do more in this arena.⁹ Indeed, there remains ample opportunity for the SEC to be even more thorough and effective in its commitment to protecting investors of all ages, particularly older adults.

⁵ Recent research identified an association between a sudden loss of net worth and increased mortality. See Lindsay R. Pool *et al.*, [Association of a Negative Wealth Shock with All-Cause Mortality in Middle-aged and Older Adults in the United States](#) (Apr. 3, 2018).

⁶ See, e.g., NASAA, [NASAA Letter to SBC Leadership Regarding S. 3529, the Empowering States to Protection Seniors from Bad Actors Act](#) (Jan. 25, 2022).

⁷ See, e.g., Thomas Frank, [The SEC Is ‘Short-staffed’ and It Needs More Help to Tackle Everything from Crypto to China, Gensler Says](#) (Sept. 15, 2021); Ted Knutson, [SEC Stretched Thin, Chair Tells Congressional Appropriators](#) (May 26, 2021); Chris Matthews, [Biden’s SEC Budget Request Inadequate as Agency Tackles Ambitious Agenda, Financial Watchdogs Say](#) (June 2, 2021); Kurt Schacht, [The SEC’s Budget Shows Just How Outgunned It Is](#) (Apr. 3, 2019); Jason Voss, [Fact File: Annual Budget of the U.S. Securities and Exchange Commission](#) (Apr. 27, 2012).

⁸ See Kristen Standifer, Washington State Department of Financial Institutions, [Statement of Kristen Standifer for the Investor Advisory Committee of the U.S. Securities and Exchange Commission](#) (Dec. 2, 2021) (“Standifer Statement”) (explaining that many state securities regulators do not have access to suspicious activity reports).

⁹ See former SEC Commissioner Elad Roisman, [Remarks before the Investor Advisory Committee](#) (Dec. 2, 2021).

- a. **The SEC could do more to protect investors who are using self-directed IRAs, also known as SDIRAs.** During its September 2020 and March 2021 meetings, the IAC sponsored a panel discussion about self-directed IRAs, also known as SDIRAs.¹⁰ On December 2, 2021, the IAC approved a recommendation to address investor protection issues affecting self-directed IRAs.¹¹ While the United States government currently lacks a mechanism for gathering and analyzing demographic information provided voluntarily by the owners of SDIRAs, or for that matter provided voluntarily by the owners of any type of investment account, the experience of state securities regulators interacting with fraud victims suggests that older adults are the primary owners of SDIRAs.¹²
- b. **The SEC could do even more to strengthen the training of investment professionals on financial exploitation of older and sometimes vulnerable adults.** The need for the SEC's additional support on the training of investment professionals is clear. In a sweep conducted by state securities regulators of investment advisers in 2021, state securities regulators learned that one of the most common examination deficiencies was the failure to provide training for employees on financial exploitation of older and sometimes vulnerable adults.¹³ If state-registered investment advisers are not providing training, other types of registrants probably are not providing training either.
- c. **The SEC could do more to encourage investors to identify a trusted contact.** During a recent outreach exercise, NASAA repeatedly heard a desire for regulators to provide information to investors about trusted third-party contacts. In fact, one financial firm reported that it received feedback that clients (i) felt the trusted third-party contact was a marketing device and (ii) did not want to designate one for fear the firm would reach out to the person to solicit business.¹⁴

RECOMMENDATION

The IAC's recommendation is as follows:

1. Change the fraud narrative.

¹⁰ See SEC Investor Advisory Committee, [Minutes of the Meeting of September 24, 2020](#). See also SEC Investor Advisory Committee, [Minutes of the Meeting of March 11, 2021](#).

¹¹ See SEC Investor Advisory Committee, [Recommendation of the Investor as Purchaser Subcommittee of the SEC Investor Advisory Committee regarding Individual Retirement Accounts](#) (Dec. 2, 2021).

¹² See, e.g., [2021 NASAA Presidential Address: Melanie Senter Lubin, Maryland Securities Commissioner](#) (Sept. 21, 2021).

¹³ See Standifer Statement.

¹⁴ See Standifer Statement.

As the SEC knows, until society shifts how we talk about and treat victims of fraud, we will never have a true picture of the accurate spread, cost, and impact of this criminal and civil activity, especially as it affects older adults. Victims report feeling shame, humiliation, and guilt and often blame themselves for the financial devastation they have experienced. Family and friends, law enforcement, and prosecutors may be perceived as judgmental, further discouraging the victims from sharing their experiences, and resulting in many fraud cases going unreported. In the United States, narrative change has seen success in other arenas, such as how our society has evolved in how we now talk about – and react to – sexual assault, suicide, and mental health. These societal shifts have led to heightened empathy for populations who were once largely scorned, as well as increased disclosure, which has led to positive change for those affected.¹⁵

Taking the following important steps in the fraud arena would have an immediate impact on the lives of fraud victims, including how the justice system and the government handle fraud incidences. Five key areas of opportunities include: **(1)** using terminology within the legal system to identify financial fraud; **(2)** emphasizing language more indicative of the depth and breadth of the violative conduct and illustrating the human impact of the fraud beyond numbers; **(3)** shifting language to capture the precise nature of the criminal and civil activity; **(4)** crafting language guides for actors across the system; and **(5)** avoiding the use of terms like “fraudster,” which diminish the violative conduct, and instead refer to these perpetrators as criminals or bad actors. Action in these areas will begin to shift the foundational values that reinforce harmful victim-blaming practices and help to decrease victim shame, deprioritization, and dehumanization.¹⁶

Laudably, the absence of significant victim blaming language in SEC’s public content suggests that the agency understands the importance of language in this arena.¹⁷ The following are good examples of the SEC using the correct language:

- In a tip sheet on binary options fraud, the SEC explains how the scam works without resorting to language that puts the responsibility on the fraud victim. “These complaints typically involve customers who have deposited money into their binary options trading account and who are then encouraged by ‘brokers’ over the telephone to deposit additional funds into the customer account.”¹⁸ A less

¹⁵See [Let’s Talk About How We Talk About Fraud](#). (December 2021)

¹⁶ AARP, *Reframing the Cultural System of Blaming Victims of Financial Fraud: A Movement to Change Our Societal Response to a Rampant and Growing Crime*. (Publication pending, 2022.)

¹⁷ An example of the victim-blaming approach appeared in a March 2022 article in Yahoo Sports, with the headline, *Wine Brokers Duped Investors Out of Millions in Alleged \$100M Ponzi Scheme*. The article describes the victims as less savvy investors who were bilked and duped. A less leading headline would have been *Wine Brokers Stole Millions from Investors in a Ponzi Scheme*. See [Wine Brokers Duped Investors Out of Millions in Alleged \\$100M Ponzi Scheme](#) (Mar. 2, 2022).

¹⁸ See Binary Options Fraud. <https://www.investor.gov/protect-your-investments/fraud/types-fraud/binary-options-fraud>

thoughtful approach would have been to write that the brokers duped the customers.

- In a press release, the SEC stated, “As we allege, Auzins was engaged in a brazen scheme to defraud retail investors under the guise of profitable digital asset opportunities.”¹⁹ The focus is on the bad actor (Auzins) and his act (a brazen scheme to defraud retail investors). A less thoughtful approach would have been to write that Auzins duped the retail investors, thereby placing the blame on retail investors who ostensibly should have known better.

In addition to the SEC leading by example, the IAC recommends that the SEC use its influence to persuade its peer regulators to commit to narrative change as well. This could take the form of one or more roundtable discussions, producing a press release that puts the SEC on record as committing to this important initiative, or other public action that raises the visibility of the issue and positions the SEC as the leader of change. Such actions could have a game-changing effect in how the United States responds to financial fraud.

2. Lead a coordinated effort to strengthen the system in the United States for reporting, addressing, and preventing investment fraud.

The SEC should work across state and federal agencies and in partnership with financial firms to make it easier for the government, the private sector, and the investing public to report and, as appropriate, access the information needed to protect our nation’s investors, particularly older investors. As the SEC knows, it is difficult, if not impossible, to prevent or detect harm when it is happening outside your line of sight. In particular, the SEC should do the following:

- a. Establish a central coordinator with responsibility for a new inter-agency, intra-agency database.** In short, there should be a single coordination center at the SEC (“Center”) that, among other responsibilities, establishes and oversees a new, secure, central database for reporting, addressing, and preventing alleged violations of state and federal securities laws across all jurisdictions. There is ample cause to believe the SEC should act swiftly on this big idea. *First*, national coordination centers exist for crimes against children, cybercrime, gang crime, organized crime, and drug enforcement. For example, the National Center for Missing and Exploited Children has dramatically improved rates of missing child recovery, reduced exploitation, and prevented victimization since its founding in 1984. However, no such center currently exists for investor harm.²⁰ *Second*, for many years, government and private stakeholders have expressed a need for a centralized

¹⁹ See [SEC Charges Latvian Citizen with Digital Asset Fraud](#). (Dec. 2, 2021)

²⁰ See [The Missing and Exploited Children’s \(MEC\) Program: Background and Policies](#). (July 15, 2021) Congressional Research Service. See also [NCMEC 2020 Annual Report](#).

reporting system and database so that all stakeholders, including, without limitation, the SEC, state securities regulators, adult protective services, and financial firms, can work simultaneously and collaboratively to protect investors.²¹ While such calls for action resulted in the pursuit of a for-profit centralized reporting program that a small number of state jurisdictions are using or piloting, the program as currently designed would not generate simultaneous reports to all stakeholders, nor grant simultaneous access to the information.²² Indeed, as far as the IAC is aware, the SEC cannot view this information without purchasing the program itself.

b. Use the new Center at the SEC to strengthen coordination at the SEC. The Center could be a tool for coordinating the SEC's many efforts to protect older adults. *First*, the Center could help coordinate the SEC's education and outreach, examination, and enforcement initiatives designed to protect older adults. *Second*, the Center could be an outward facing office for members of the public seeking information. As context here, the SEC IAC, as well as the general public, are presently unclear who at the agency coordinates or does this work. The lack of clarity for us, as well as other stakeholders, results in inefficiencies that could be resolved if there were a dedicated office.²³ *Third*, the Center could spearhead ongoing data collection and research that would inform the agency's rulemaking agenda.²⁴ Presently, the SEC's Office of the Investor Advocate appears to lead such work. However, the use of this work by other divisions and offices appears sporadic at best.

3. Move the needle once again on longstanding efforts to encourage investors to "Ask and Check" before they hire an investment professional.

As the SEC knows, understanding your investment professional's background is more important than ever. Year in and year out, many of the SEC's enforcement actions, as well as enforcement actions taken separately by state securities regulators, involve at least one unregistered professional.²⁵ During an event hosted by NASAA in September 2021, SEC

²¹ See Standifer Statement ("For context here, most state securities regulators do not have access to Suspicious Activity Reports, commonly referred to as SARs. This is true even when the suspicious activity falls squarely within the jurisdiction of the state securities regulator and no other agency. So, by way of example, if a custodian detects and reports suspicious activity to the government, the state securities regulator, in most instances, does not have access to the report.").

²² See EverSafe, [Helpvul Unified Reporting Portal](#).

²³ The SEC has established other offices such as the SEC's Strategic Hub for Innovation and Financial Technology, commonly referred to as FinHub, to address similar issues. SEC, [SEC Announces Office Focused on Innovation and Financial Technology](#) (Dec. 3, 2020).

²⁴ There appear to be several opportunities to better collect relevant data. By way of example, the Tip Form used on the SEC Whistleblower page lacks a field for people to report their age voluntarily. Ensuring the capturing of this data will further support efforts to understand and mitigate the harm done by these criminal enterprises on investors of all ages, particularly older investors.

²⁵ Review the SEC's annual enforcement reports at <https://www.sec.gov/reports>. Review NASAA's annual enforcement reports at <https://www.nasaa.org/policy/enforcement/>.

Commissioner Allison Herren Lee echoed this point, noting the importance of database systems that provide critical information to the public and support greater consolidation of this information across various investment professionals.²⁶

Building on the SEC's efforts to address the SEC IAC's 2015 recommendation to empower investors who want to conduct background checks,²⁷ the SEC should examine ways to improve its efforts to encourage investors to conduct robust background checks before entrusting a firm or professional with their hard-earned savings. When doing this work, the SEC should continue to consider that, increasingly, investors access information from a smaller device such as a mobile phone or tablet rather than a computer monitor. Among other possible initiatives, the SEC should consider whether and how to address the fact that we probably are undermining our collective efforts to encourage the investing public to better distinguish between broker-dealers on the one hand and investment advisers on the other hand by continuing to use a database that is called BrokerCheck[®] and a rule that allows the broker-dealer to post the mandated link to FINRA's BrokerCheck[®] on the main page of the dual-registrant's website.²⁸ Such practices, among others, probably contribute to ongoing investor confusion regarding the various types of investment professionals.²⁹

In addition, the SEC should explore the possibility of incorporating additional background information into the database, as well as how to make it easier to determine if a particular investment professional is registered or otherwise qualified to trade certain products. Currently, it is not easy to tell on FINRA's BrokerCheck[®] whether a broker is or is not registered with the Municipal Securities Rulemaking Board. Moreover, while organizations such as the National Futures Association have their own databases,³⁰ they are not integrated into the search tool that the SEC offers the investing public via its investor.gov website. In an ideal world, investors would have access to a one-stop-shop for checking the backgrounds of professionals.

4. Strengthen investor protection for self-directed IRAs.

The IAC encourages the SEC to view the IAC's prior recommendation regarding SDIRAs as a call for action that would benefit older adults. While this is not a new problem for the government and the private sector to address,³¹ it is growing increasingly critical for all of us to

²⁶ See NASAA Fall Annual Meeting, [Panel Discussion on Emerging Trends and Challenges in the Financial Sector](#) (Sep. 19, 2021).

²⁷ See SEC IAC, [Empowering Elders and Other Investors: Background Checks in the Financial Markets](#) (July 16, 2015).

²⁸ FINRA, [Complying with the BrokerCheck Reference and Link Requirements in FINRA Rule 2210](#).

²⁹ An alternative would be to require all registrants to post a link to the SEC's investor.gov website, which prominently displays a resource for 'checking out your investment professional' without any mention of the word broker. See the SEC's investor-focused website at <https://www.investor.gov/>.

³⁰ BASIC is a free tool that NFA Members and investors can use to research the background of derivatives industry professionals. Learn more <https://www.nfa.futures.org/basicnet/>.

³¹ See SEC, [SEC Files Fraud Charges Alleging a Multi-Million Dollar Scheme That Targeted Retirement Accounts](#) (Feb. 2, 2022) ("According to the SEC's complaint, from December 2017 through at least July 2021, Safeguard and

focus on and act towards curbing bad actors and protecting the hard-earned assets of these investors.³² The IAC encourages the SEC, as it implements the prior IAC recommendation, to engage with investor advocates that specialize in elder investor protection.³³ In addition, the IAC encourages the SEC's Division of Enforcement to include in relevant enforcement actions that the investor used a SDIRA even if the use of a SDIRA is not a fact that is necessary to prove or settle the violation in question. Generally, we believe that the extent of the problem associated with SDIRAs is far greater than currently reported through enforcement actions and other mechanisms for gathering such information.

5. Strengthen the training of investment professionals.

The SEC should use its authority and resources to encourage, promote, improve, and otherwise strengthen ongoing efforts to train investment professionals on how to detect, prevent, and report financial crimes and other violations. As the SEC knows, in 2021, the SEC, FINRA, and NASAA prepared and released a training presentation. Financial firms can use the presentation to train their associated persons on how to detect, prevent, and report financial exploitation. When supplemented with information about the organization and its roles, the training will meet the requirements of the federal Senior Safe Act and certain state statutes.³⁴ However, the need for the SEC's leadership and additional support on the training of investment professionals is clear. By way of example, the SEC should develop a plan to promote training and invite other stakeholders, including NASAA and FINRA, to collaborate.

6. Strengthen ongoing efforts to encourage the designation of a trusted contact.

The SEC should do even more to encourage the identification of a trusted third-party contact on all financial accounts. Studies have shown that naming a trusted third-party contact is one of the most important things an investor of any age can do to protect against financial exploitation. Unfortunately, perhaps not ironically, older adult investors, who are statistically the most likely to require the aid, are the ones least likely to provide a trusted contact.³⁵ While the SEC has undertaken educational work in this area, typically in collaboration with the CFPB,

Santulan acted as investment advisers and persuaded investors to sell their existing securities, transfer the proceeds into self-directed Individual Retirement Accounts, and invest the proceeds into gold and silver coins by making false and misleading statements about the safety and liquidity of the investors' securities investments, Safeguard's business, and its compensation.”); *In re Equity Trust Co.*, SEC Adm. Proceeding File No. 3-16594 (Sept. 28, 2017).

³² See, e.g., NASAA and the SEC, [Self-Directed IRAs and the Risk of Fraud](#) (Sept. 28, 2011); NASAA, [Informed Investor Advisory: Third-Party Custodians of Self-Directed IRAs and Other Qualified Programs](#) (Dec. 2014); SEC Investor Alert, [Self-Directed IRAs and the Risk of Fraud](#) (Aug. 18, 2018).

³³ See SEC Chair Gensler, [Prepared Remarks before the Investor Advisory Committee](#) (Mar. 10, 2022) (“Finally, I’d like to thank the Investor as Purchaser Subcommittee for your Recommendation regarding Individual Retirement Accounts in December. I am grateful for the thoughtful recommendation on a critically important retail investor protection issue. We must always be concerned when gaps in our regulations expose retail investors to fraudulent schemes. I’ve asked my staff to look into what actions we can take, both internally and with our regulatory partners, to address these issues.”).

³⁴ See [SEC, NASAA, and FINRA Offer Free Resource to Securities Firms to Assist in Detection, Prevention and Reporting of Financial Exploitation of Seniors](#) (June 15, 2021).

³⁵ See Standifer Statement.

FINRA, or NASAA,³⁶ it, for example, could continue to use its communication channels to reach the investing public on this important issue and explore the possibility of conducting rulemakings or examinations that are consistent with the goal of encouraging the designation of a trusted contact.

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³⁶ See, e.g., SEC and CFPB, [Investor Bulletin and Consumer Advisory: Planning for Diminished Capacity and Illness](#) (June 1, 2015); SEC and FINRA, [Investor Bulletin: Please Consider Adding a Trusted Contact to Your Account](#) (Mar. 2020); NASAA, [FINRA, NASAA and SEC OIEA Urge Investors to Establish a Trusted Contact to Increase Investor Protection](#) (Sept. 28, 2021).