

PROTECTING SENIOR INVESTORS:
COMPLIANCE, SUPERVISORY AND OTHER PRACTICES USED BY
FINANCIAL SERVICES FIRMS IN SERVING SENIOR INVESTORS
2010 Addendum

U.S. Securities and Exchange Commission’s
Office of Compliance Inspections and Examinations,*
North American Securities Administrators Association, and
Financial Industry Regulatory Authority
August 12, 2010

Today in the United States, nearly 40 million people are age 65 and older. This number is expected to more than double to 89 million by 2050.¹ In addition to these staggering numbers, many seniors find themselves with smaller nest eggs than they anticipated as a result of the economic downturn experienced over the past 18 months. Estimates show that total retirement assets decreased by \$4.5 trillion, or 25%, from 2007 to the first quarter of 2009.²

In light of these demographics, Staff at the Securities and Exchange Commission (“SEC”), the Financial Industry Regulatory Authority (“FINRA”) and the North American Securities Administrators Association (“NASAA”) continues to view the protection of senior investors as a top priority. With this in mind, in March 2008, NASAA adopted the NASAA Model Rule on the use of Senior-Specific Certifications and Professional Designations in response to the possible risk to investors that a designation may be used to imply expertise or credentials, which may be inaccurate or misleading. As of February 2010, 19 states have adopted the NASAA Model and two states have adopted state specific rules prior to adoption of NASAA’s Model.

As part of securities regulators’ collaborative efforts to protect senior investors, we released a public report in September 2008 that summarizes practices used by financial services firms and securities professionals in serving senior investors. The report entitled “*Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by*

* This is a report of the Commission’s Staff, FINRA and NASAA, and does not reflect the views of, or include findings or conclusions by, the Securities and Exchange Commission.

¹ <http://www.transgenerational.org/aging/demographics.htm#ixzz0bqbUpAAv>.

² At the end of 2007 U.S. retirement assets stood at \$17.9 trillion. By the end of the first quarter of 2009 they were down to \$13.4 trillion. See *The U.S. Retirement Market, 2008* at www.ici.org/pdf/fm-v18n5.pdf and *The U.S. Retirement Market, First Quarter 2009* at www.ici.org/pdf/09_q1_retmrkt_update.pdf.

*Financial Services Firms in Serving Senior Investors*³ (“2008 Report”) was intended to assist industry firms in enhancing their compliance, supervisory and other practices.

To continue our efforts to protect senior investors, we asked some of the firms that participated in the original fact finding initiative to share with us any additional practices they may have implemented since the 2008 Report was published. In addition, Staff researched additional practices identified in various industry publications. This addendum to the September 2008 Report summarizes additional practices used by financial services firms and securities professionals in serving senior investors in the following areas:

- Communicating effectively with senior investors;
- Training and educating firm employees on senior-specific issues;
- Establishing an internal process for escalating issues and taking next steps;
- Obtaining information at account opening;
- Ensuring appropriateness of investments; and
- Conducting senior-focused supervision, surveillance and compliance reviews.

As stated in the 2008 Report, by sharing this information, we hope to provide practical examples to firms that are seeking to strengthen their infrastructure to assist them in working with senior investors in an ethical, respectful and informed manner. This 2010 Addendum does not create or modify existing regulatory obligations with respect to senior investors. It also does not catalog the full range of compliance practices applicable to senior investors. Rather, the 2010 Addendum focuses on specific, concrete steps that firms are taking to identify and respond to issues that are common in working with senior investors. By publishing this information, we also hope that financial services firms will identify and implement additional practices to help ensure that the financial services industry continues to be mindful of the particular needs of senior investors.

I. Practices Used by Financial Services Firms in Serving Seniors

During 2009, firms continued to implement new processes and procedures aimed at addressing common issues associated with their interactions with senior investors. Responding firms indicated they are enhancing procedures in the following areas:

A. Communicating Effectively With Senior Investors

Some firms indicated they are producing brochures and information aimed at educating senior investors on various topics. Examples include:

- A brochure outlining fraud awareness, advising clients to monitor their credit report for potential unauthorized activity, warning clients never to sign a blank or incomplete document or to give cash to a securities professional.
- A link on the firm’s website to the following sites: SEC Investor Information for Seniors; FINRA Investor Alerts; and NASAA Senior Investor Resource Center.

³ <http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf>.

- Recommendations to customers to maintain the following information in a safe and secure place to ensure that documents are easily accessible in case of an emergency, including:
 - An inventory of assets with account numbers, passwords and locations of safe-deposit boxes.
 - A list of debts and regular obligations, with a list of the institutions to which they are owed and account numbers.
 - A list of important contacts, such as doctors, lawyer, and securities professional.

B. Training Firm Employees on Senior-Specific Issues

Firms continue enhancing training for its securities professionals to focus on senior specific issues and to help securities professionals recognize potential financial abuse and signs of potential diminished capacity. These firms utilize a variety of training methods to help ensure the training is effective that include the following:

- Implementing a Firm Element continuing education course⁴ providing guidance to help securities professionals identify special considerations they should be aware of when working with senior clients or clients approaching retirement.
- Reminding securities professionals what types of sales practices have been identified by regulators as posing potential risks when marketing to seniors.
- Providing real-life examples of SEC, FINRA and State actions taken with respect to senior financial abuse.
- Utilizing testing at the end of a training session to ensure learning.
- Providing enhanced training to supervisors regarding the review of a transaction based on specific factors or “red flags” the supervisor should consider in the review.
- Designating a particular individual/supervisor responsible for addressing questions regarding activities, practices and policies related to seniors.
- Providing a link on the internal website to outside resources that may be useful when selling securities to seniors such as: 1) SEC Investor Information for Seniors, 2) FINRA Investor Alerts, and 3) NASAA Senior Investor Resource Center.
- Providing a brochure or flyer for securities professionals to help them recognize issues that are unique to older clients: (i) best practices when working with seniors; (ii) information about identifying and recognizing diminished capacity and elder financial abuse; and (iii) the policies and procedures to be followed once diminished capacity or elder financial abuse is suspected. Examples of procedures include: asking clients to carefully read the materials discussed and, if desired, to take extra time to consult with a trusted family member or friend; avoiding use of financial jargon; familiarizing themselves with the resources in

⁴ NASD Rule 1120.

- the community for addressing the unique needs of older clients; and allowing extra time to meet so the client does not feel rushed.
- Providing a script to aid securities professionals in having difficult conversations with clients.

Firms told us they continue to include segments in their educational programs to help securities professionals identify signs or “red flags” that may indicate that an investor may have diminished capacity or a reduced ability to handle financial decisions. Firms indicated additional signs now included are:

- Recurring cognitive problems that become worse over time.
- Behavior that is out of character (e.g., the frugal client who becomes a spendthrift, the client who wants to upset a long-established investment strategy).
- Difficulty in understanding important aspects of the account.

C. Establishing an Internal Process for Escalating Issues and Taking Next Steps

Some firms told us they had created and adopted policies with respect to the next steps to take after an issue was identified and escalated. These policies include:

- Identifying a central point of contact within the Compliance Department to provide guidance on senior investor issues.
- Creating a mailbox for all senior investor related questions for follow-up.
- Escalating any suspected elder abuse to branch management and then to divisional counsel to determine whether the situation requires reporting to state authorities.
- Potentially declining a transaction or declining to open an account if there is suspicion of financial abuse or diminished capacity.

D. Obtaining Information at Account Opening

As discussed in the 2008 Report, pursuant to a variety of securities laws and rules, financial services firms are required to obtain sufficient information about an investor to ensure that recommendations are appropriate for the investor. The firms are also required to ensure that the investor’s account is managed in a manner that is consistent with the investor’s investment objectives. The information to be obtained includes the investors’ age, financial and tax status, and investment objectives. We noted that some firms use the account opening process to obtain additional information about the client. For example, some firms are:

- Encouraging clients to identify a third party emergency contact. Allowing the firm to notify the identified individual if there is an issue or concern related to diminished mental capacity or financial abuse by a third party.
- Requiring that the employment status field on the new account form be filled out with one of the possible responses being “retired.” This data helps the firm

identify clients who are in the “distribution” stage of life, as distinct from the “accumulation” stage.

E. Ensuring the Appropriateness of Investments

An investor’s age and life stage are important factors in assessing the appropriateness of recommendations for that investor. To address this issue, some firms are:

- Enhancing the firm’s new product committee process by analyzing and identifying potential risks to senior investors when creating new products and services.
- Conducting quality assurance calls to customers of a certain age or parameters as determined by the firm.
- Asking the following questions: How recently has the client profile information been updated? Have there been any significant changes with regard to the client’s employment status, marital status, physical condition or the needs of the client’s family or significant others? Has the client made the securities professional aware of recent changes or plans to change living arrangements that may have an impact on the client’s present or future financial needs? When a securities professional is advised or becomes aware that a client’s circumstances have changed the securities professional should obtain updated information and further consult with the client about whether the client’s investment objectives or needs have also changed.
- Reminding securities professionals that everyone goes through life stages and at each stage, the suitability or appropriateness of a product or service may shift. For example, clients in their late twenties might be getting married or starting a family.

F. Conducting Senior-Focused Supervision, Surveillance and Compliance Reviews

Firms continue to utilize supervision and surveillance reports to attempt to capture transactions and practices that may impact seniors negatively. Some examples include:

- Using trending reports to identify patterns that may be indicative of potential abusive behavior by securities professionals.
- Analyzing the firm’s client base with respect to age demographics and using this information to help meet current and prospective customer needs.
- Creating policies that require a discussion during the annual branch audit with supervisors and sales professionals about sales to seniors.
- Maintaining trade blotters that can be filtered by “senior investor” status, as defined by the firm.
- Using the customer’s age as one factor in evaluating the appropriateness of an investment in light of risk tolerance.
- Conducting risk based statistical sampling based upon variables such as the customer’s age, product type, and whether a product replacement is involved.

- Requiring corrective action be taken when there is incomplete customer account documentation.
- Identifying securities professionals whose book of business includes a large percentage of sales to seniors where the subsequent activity associated with this business (such as cancellations or large outflows), could be an indicator of unsuitable sales practices.
- Reviewing the entire book of business and compliance records for those securities professionals whose book of business includes a large percentage of sales to seniors.

II. Conclusion

The protection of senior investors is a priority. The practices described in the 2010 Addendum and the 2008 Report should be particularly helpful to the financial services industry and securities professional that provide services to senior investors. As the number of senior investors increases each year and many senior's retirement assets decreased, it is important that firms remain mindful of the concerns in dealing with senior investors.

By sharing this information, the SEC, NASAA and FINRA Staff hope that financial services firms that are seeking to ensure that they serve senior investors in an ethical, respectful and informed manner will find useful suggestions. We also urge financial services firms to continue to develop practices that will help them to better serve senior investors.