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

Securities and Exchange Commission's
Office of Compliance Inspections and Examinations,*
North American Securities Administrators Association, and
Financial Industry Regulatory Authority
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Statistics show that baby boomers today control more than $13 trillion in household investable assets, or over 50% of total U.S. household investment assets.[1] Projections also show that nearly one in every six Americans will be 65 or older by the year 2020.[2] Given the increasing number of investors who will need advice and guidance, financial services firms are actively developing new products and seeking to provide financial advice and services to investors as they prepare for and reach retirement.

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") view the protection of senior investors as a top priority. While securities regulators have long focused on the senior population and its particular vulnerability to fraud and abuse, beginning in 2006 securities regulators expanded collaborative efforts aimed at protecting seniors by providing educational programs targeted to senior investors, conducting focused examinations of financial services firms doing business with senior investors, and prosecuting numerous investment scams preying on senior investors.[3] Securities regulators have also provided information and guidance to financial services firms regarding senior investors.[4] These efforts are part of our shared mission to protect senior investors.

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* 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 "*Retirement of boomers will create market for advisers*" by Sue Asci, InvestmentNews, November 5, 2007. http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20071105/FREE/711050311/-1/INIssueAlert.

2 U.S. Census projections as of August 2008, available at http://www.census.gov/population/www/projections/files/nation/summary/np2008-t2.xls. At year end 2007, approximately 38 million people were 65 or older. By 2020, they will number almost 55 million people.

3 On July 17, 2006, the SEC held its first "Seniors Summit" to examine how regulators and others could better coordinate efforts to protect older Americans from investment fraud. http://www.sec.gov/news/press/2006/2006-109.htm.

4 See: *"Protecting Senior Investors: Report of Examinations of Securities Firms Providing 'Free Lunch' Sales Seminars"* (Joint Report of SEC Staff, NASAA, and FINRA, September 2007) http://www.sec.gov/spotlight/seniors/freelunchreport.pdf; "*Senior Investors: FINRA Reminds Firms of Their Obligations Relating to Senior Investors*," (Regulatory Notice 07-43, September 10, 2007) http://www.finra.org/RulesRegulation/NoticestoMembers/2007NoticestoMembers/P036815; and

As part of this ongoing effort, in February 2008, the SEC Staff, NASAA and FINRA undertook a new initiative to identify and publish examples of practices that financial services firms have developed with respect to their interactions with senior investors. To that end, we invited securities professionals, financial services firms, and industry groups to voluntarily share their practices with us.[5] A cross-section of firms and financial services industry groups and others chose to participate in this effort, including broker-dealer and investment advisory firms, larger firms and smaller firms, and firms with a variety of organizational structures. We gratefully acknowledge their contributions and their commitment to work with us on this initiative.

This Report summarizes practices used by financial services firms and securities professionals in serving senior investors in the following areas:

- Getting started: how firms are thinking of ways to remodel their supervisory and compliance structures to meet the changing needs of senior investors;
- Communicating effectively with senior investors;
- Training and educating firm employees on senior-specific issues (such as how to identify signs of diminished capacity and elder abuse);
- Establishing an internal process for escalating issues and taking next steps;
- Encouraging investors of all ages to prepare for the future;
- Advertising and marketing to senior investors;
- Obtaining information at account opening;
- Ensuring the appropriateness of investments; and
- Conducting senior-focused supervision, surveillance and compliance reviews.

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 Report 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, this Report focuses on specific, concrete steps that firms are taking to identify and respond to issues that are common in working with senior investors. By sharing this information, we also hope that financial services firms will continue to identify and implement additional practices to help ensure that the financial services industry continues to consider the particular needs of senior investors.

I. The Challenges

Any discussion about seniors raises the obvious question of who, exactly, is a "senior investor." Because investors of any age do not necessarily share the same characteristics, investment objectives, risk tolerances, or financial profiles, any definition of the term "senior investor"

NASAA's proposed model rule on the use of senior-specific certifications and professional designations (April 1, 2008) http://www.nasaa.org/NASAA_Newsroom/Current_NASAA_Headlines/8423.cfm.

5 "*Notice of Solicitation of Public Views Regarding Practices Being Developed to Deal with the Increasing Number of Senior Investors*" (SEC Release No. 34-57308, February 11, 2008) http://www.sec.gov/rules/other/2008/34-57308.pdf

would be either under-inclusive or over-inclusive. Thus, we do not define "senior investor" by reference to a specific age, but rather use the term to include investors who have retired or are nearing retirement.

An investor's age and life stage are critical components of an investor's profile and firms cannot meet their regulatory obligations without considering these factors.[6] Nonetheless, issues such as diminished mental capacity may be more prevalent among older investors and older investors may also be more frequent targets for financial abuse.

It is also important to note that not all firms are alike, and therefore practices that may make sense for one firm may not make sense for another. Our meetings with firms have demonstrated however, that there are certain issues and challenges that many firms commonly encounter in working with senior investors. Some of those issues relate to meeting regulatory obligations, such as assessing the appropriateness of an investment for investors at different stages of life, or marketing retirement products to investors who are at or near retirement age. Other challenges, such as recognizing the signs of diminished capacity or financial abuse, are not unique to the financial services industry. We have included in this Report examples of various steps that firms are taking to address these challenges because firms indicated to us that these issues are becoming increasingly common, and are of concern to the financial services industry. Ultimately, investors will benefit when financial services firms consider and address these challenges in a proactive way.

The following scenario, along with others provided throughout this Report, illustrates some of the challenges that firms face when working with senior investors and demonstrates the importance of taking steps to implement a program to address these issues.

Mr. Investor is a 76 year old widower. Bob Securities Professional has handled his investment portfolio for 25 years. His investment objective for the last 10 years has been to generate income. Recently, Mr. Investor told Bob Securities Professional that he wanted to generate higher returns from his account, and to change the beneficiaries on his IRA and Trust account from his children to his sister-in-law. Bob Securities Professional also began to notice that Mr. Investor didn't always return his telephone calls, which was unusual, as they spoke regularly over their 25 year relationship.

Bob Securities Professional is concerned about altering the investment strategy to take on more risk and also about changing the beneficiary of Mr. Investor's account under these conditions. Bob Securities Professional wonders what, if anything, he should do next.

[6] Generally, "life stage" refers to the key milestones in an investor's life, such as marriage, buying a home, saving for children's college education, preparing for retirement and retirement.

II. Practices Used by Financial Services Firms In Serving Seniors

During our meetings, many firms indicated that they have implemented and are implementing new processes and procedures aimed at addressing common issues associated with their interactions with senior investors. Some firms have indicated that they sought to consider a full range of issues, such as how to communicate effectively with senior investors; how to train and educate firm employees on senior-specific issues; how to establish an internal process for escalating issues and taking next steps when issues or questions are identified; how to encourage investors of all ages to prepare for the future; how to advertise and market to senior investors; obtaining information at account opening; how to ensure the appropriateness of investments; and how to conduct supervision, surveillance and compliance reviews focused on senior-specific issues.

A. Getting Started: How firms are thinking of ways to remodel their supervisory and compliance structures to meet the changing needs of senior investors

Some firms told us that they have sought to develop a consistent process for addressing senior-related issues throughout the firm. To accomplish this goal, some firms created internal working groups, task forces, or committees, while others have designated one or more individuals within compliance, legal or management to focus on senior-related issues. The role of these groups or designated individuals varies greatly among firms, and examples of their responsibilities, some of which already are required, include:

- Conducting an inventory of the firm's operations and identifying areas of the firm that need to emphasize investors' life stage issues.
- Reviewing the adequacy of existing policies and procedures within different areas of the firm that need to incorporate investors' life stage issues.
- Reviewing products for appropriateness for senior investors.
- Establishing age-based restrictions on certain products or product features.
- Reviewing the use of proposed senior designations.
- Reviewing and approving marketing materials aimed at senior investors.
- Developing firm-wide escalation procedures to assist securities professionals in raising concerns about potential diminished capacity or elder financial abuse situations.
- Making in-depth training opportunities available for the firm, including training by experts on issues related to aging.
- Consolidating all senior investor-related information into one website for easy access for securities professionals.

- Reviewing, and modifying when necessary, criteria used for risk-based supervisory and compliance reviews.

- Providing input in connection with the firm's annual risk assessment regarding risks related to senior investors.

For many firms, this type of group or task force was viewed as helpful in streamlining processes across business units, acting as a central resource for issues related to seniors, and serving as a contact for employees as they come across situations they need help to resolve. In establishing and operating such groups, some firms:

- Include individuals from various areas of the firm and with different operational experience on the committee or taskforce, including but not limited to staff from portfolio management, sales, marketing, legal, compliance, and/or internal audit.

- Meet on a regular basis to discuss issues surrounding senior-specific policies and procedures.

For some firms, based on their size or other factors, establishing committees or working groups may not make sense. For these firms, designating a specific individual or a department to identify and develop protocols for working through senior-related issues or to serve as a central point of contact for questions about senior issues may be an alternative to establishing a committee or working group.

B. Communicating Effectively With Senior Investors

Financial services firms explained that they have adopted practices that they believe improve their communication with senior investors. These include:

- Increasing the frequency of contact with senior investors to remain informed about changes in investors' financial needs, employment status, health, and other life events.

- Encouraging securities professionals to talk to investors about having an emergency or alternate contact on file with the firm, such as a trusted family member or other trusted individual.

- Educating investors about the benefits of having a power of attorney and when appropriate, encouraging investors who are in good health to share details of their financial affairs with trusted family members, estate lawyers and/or other professionals to help ensure that if the investor's health deteriorates, their financial affairs will be properly handled.

- Documenting conversations with investors in case they have problems with lack of recall or to help resolve any misunderstanding.

- Sending follow-up letters to investors after conversations to document and reiterate what was discussed.

- Avoiding financial jargon, using plain language, and having larger font versions of marketing materials available.

- Providing brochures that explain to investors how to identify, locate, organize and store important documents so that they are easily accessible in case of an emergency.

Many firms produce brochures, newsletters and magazines aimed at educating senior investors. Some firms include educational materials in their monthly or quarterly mailings to investors. These materials are targeted to both a particular age group and life stage, and examples include:

- Marketing pieces (*i.e*., booklets, magazines, and single page flyers) to assist investors in understanding specific products, meeting financial goals and investment strategies for pre-retirement and retirement.

- Publications that are education-oriented and cover topics such as analyzing social security and retirement benefits, identifying healthcare and estate planning resources.

- Educational materials created by third parties and educational resources from public websites targeted to senior investors.

We note that many of these materials may be primarily designed to market retirement-oriented services and products to senior investors. Firms must make sure that these materials, like all materials provided to investors, are not misleading and comply with relevant regulatory requirements.

C. Training Firm Employees On Senior-Specific Issues

> *In the subsequent months, Bob Securities Professional spoke with Mr. Investor at least twice a month. Mr. Investor seemed disoriented and did not recall transactions that he had previously authorized. Bob Securities Professional noted these observations in his file. Bob Securities Professional asked Mr. Investor whether he had all of his financial information in one place. Mr. Investor was not sure where his financial information was located. Bob Securities Professional encouraged Mr. Investor to invite his Daughter to their meetings.*

Many firms have taken a proactive approach in training their securities professionals to help ensure that when they are faced with similar difficult and sensitive situations, they have the proper tools to address the issues raised. Firms utilize a variety of training methods to help ensure that the training is effective, including the following:

- Using hypothetical examples to illustrate the potential issues that securities professionals may encounter.

- Creating web-based modules focused on diminished capacity, suitability, communicating with senior investors, advertising, the use of professional designations and elder financial abuse.

- Distributing periodic newsletters or emails that contain articles or reminders about current policies and procedures related to senior investors.

- Collaborating with gerontologists and other aging experts to help securities professionals understand and meet the needs of senior investors.

- Creating educational materials on multi-generational and wealth transfer issues and the transition from planning for retirement to managing financial needs during retirement.

- Using small, interactive groups of securities professionals as forums to discuss senior issues in depth.

Regardless of the mechanism used, many firms appear to be developing training for their employees on senior-specific issues. Two areas that firms mentioned in particular are how to identify signs of diminished capacity and elder financial abuse. Each area is discussed below.

- **Training on How to Identify Diminished Capacity**

Some firms told us that a critical aspect of their educational programs for employees is focused on identifying signs of diminished mental capacity in an investor. The ability to observe changes in investors' behavior places securities professionals in a unique and challenging position. Firms shared their concerns about steps they are taking when an investor shows signs of diminished capacity, about their responsibilities in these instances, and about their potential liability in instances where the securities professional does not address the issue.

We note that securities professionals cannot take advantage of investors in a manner that would violate an adviser's fiduciary duty to the investor or a securities broker's responsibility to follow just and equitable principles of trade. Firms have an obligation to supervise employees to prevent this behavior. In circumstances where the investor appears to lack capacity to understand an investment or to provide informed consent, firms may want to consider implementing procedures for securities professionals to follow, such as seeking advice from supervisors about contacting a trusted family member or the person designated in the investor's power of attorney.

Many firms have included 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. Examples of signs include, but are not limited to, the following:

- The investor appears unable to process simple concepts.

- The investor appears to have memory loss.

- The investor appears to have difficulty speaking or communicating.

- The investor appears unable to appreciate the consequences of decisions.

- The investor makes decisions that are inconsistent with his or her current long-term goals or commitments.

- The investor's behavior is erratic.

- The investor refuses to follow appropriate investment advice; this may be of particular concern when the advice is consistent with previously-stated investment objectives.

- The investor appears to be concerned or confused about missing funds in his or her account, where reviews indicate there were no unauthorized money movements or no money movements at all.

- The investor is not aware of, or does not understand, recently completed financial transactions.

- The investor appears to be disoriented with surroundings or social setting.

- The investor appears uncharacteristically unkempt or forgetful.

- **Training on How to Identify Elder Financial Abuse**

Elder abuse comes in a variety of forms. It can be physical or emotional and can be in the form of neglect, abandonment, or through financial exploitation. Elder financial abuse is generally referred to as the misuse of a person's money or belongings by a family member or a person in a position of trust.

Similar to detecting diminished capacity, firms indicated that securities professionals are on the front lines of seeing indications of possible financial abuse and, as a result, have included segments in their educational programs to help securities professionals identify signs -- or "red flags" -- that may indicate that an investor may be subject to elder abuse. Examples of these signs include:

- The investor gives a power of attorney to someone that, to the investor's securities professional, appears inappropriate.

- Indications that the investor does not have control over or access to his/her money.

- The investor's mailing address has been changed to an unfamiliar and unexplained address.

- Inability of the securities professional to speak directly to the investor, despite attempts to do so.

- The investor appears to be suddenly isolated from friends and family.

- There is a sudden, unexplained or unusual change in the investor’s transaction patterns.

- There are unexplained disbursements made in an investor’s account that are outside of the norm.

- The sudden appearance of a new individual involved in the investor’s financial affairs.

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

Many firms told us that the key to responding to signs of diminished capacity or financial abuse is to establish internal procedures that permit the securities professional to obtain advice from others within the firm on possible next steps to take. The following are examples of escalation procedures or next steps identified by some firms:

- Requiring a securities professional to document suspected diminished capacity or elder financial abuse, and escalate the issue immediately.

- Clearly designating the individual or groups to whom the securities professional is to escalate the matter, *e.g.*, a branch manager, a designated member of the legal or compliance department or a specially-created senior task force within the firm.

- Training employees to escalate early - at the first sign.

- Embedding escalation procedures in employee training and continuing education courses.

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

- Prohibiting the securities professional from making securities recommendations to the investor or investments in the account until the concern no longer exists.

- Communicating with the investor’s designated emergency contact or the person provided with power of attorney for the investor.

- Conducting a review of the investor’s account and identifying any transactions or patterns that could indicate a problem (*i.e.*, financial abuse by a securities professional or other individual).

- Maintaining frequent contact with the investor to assess any new developments.

- Having a manager or designated individual communicate with the investor along with the securities professional who has direct responsibility for the investor's account.

- Notifying the legal and compliance departments of further conversations with the investor, and involving them as appropriate.

- Consulting appropriate state statutes to determine next steps, which may include alerting appropriate authorities, including a government protective services organization, if elder abuse is suspected.

- Documenting any contact with the legal department in the investor's file.

Firms indicated that having effective escalation procedures and a process for considering and taking further steps to be critical in helping to ensure that they address issues of possible diminished capacity or financial abuse.

E. Encouraging Investors of All Ages to Prepare for the Future

Financial services firms also told us that they are considering steps that help them and their investors prepare for the future. Investors of *any* age can take steps to plan for the event of mental or physical incapacity.

As stated above, some firms are asking investors to provide them with emergency or alternate contacts for use in the event that the firm is unable to contact the investor or if the firm suspects diminished capacity or elder abuse. Some firms specify the permitted purposes for contacting this alternate person and receive permission to keep this information in the investor's files.

Another approach is for the securities professional to ask the investor whether he/she has provided a power of attorney granting authority over the investor's account to a trusted friend or family member under certain circumstances. These arrangements may more formally facilitate the management of an investor's account should certain circumstances occur. Practices in this area include:

- Encouraging securities professionals to have conversations about the benefits of executing powers of attorney with all investors as a matter of routine during the account opening process.

- Encouraging securities professionals to have a conversation with the investor prior to opening an account as to whether anyone else should be consulted with regard to the account.

Firms were mindful that powers of attorney can be abused and have developed practices to address risks associated with abuse of a power of attorney. Practices identified in this area include:

- Having a process for identifying accounts of investors where a power of attorney is added or changed, followed by a change in activity compared with the investor's stated financial objective and profile. For example, firms looked for evidence of unusual checks written out of the account within a given timeframe, and a concentration of checks to a single, third-party payee.

- Requiring that copies of all confirmations and account statements be sent to both the account holder and the power of attorney.

- Having a process to check the signature of the investor against other signed documents received in order to determine authenticity.

Whether by encouraging investors to provide alternate contact information or to execute a power of attorney, firms stated that encouraging all investors to be prepared for the future was an increasingly important issue.

F. Advertising and Marketing to Seniors

Mr. Investor met with Bob Securities Professional to discuss his portfolio. At the meeting, Mr. Investor showed Bob Securities Professional an advertisement that he had received from another securities professional. The advertisement indicated that Mr. Investor would receive a 50% return on his investment. The bottom of the advertisement included the designation "Senior Specialist." The title confused Mr. Investor.

Many firms indicated that they have adopted one or more practices that were outlined in the public report issued in September 2007 by the SEC's Staff, NASAA and FINRA titled, "*Protecting Seniors: Report of Examinations of Securities Firms Providing "Free Lunch" Sales Seminars.*"[7] In that report, in Appendix B, "Effective Compliance and Supervisory Practices," we noted examples of compliance and supervisory practices that appeared to be effective in helping to ensure adequate supervisory oversight and compliance with the securities laws. While that Report did not create or modify existing regulatory obligations to senior investors, we provided those practices in that Report in order to assist financial services firms in reviewing their practices in this area. While the complete list is not reiterated here, some of the practices that many firms have adopted include:

- Banning securities professionals from using marketing materials to target particular age groups, such as referring to an event as a "senior seminar" or a "senior meeting."

- Providing an online brochure with detailed instructions accessible to all employees describing the approval process required for seminars, investor appreciation events, continuing education seminars, outside speaking events, booths/exhibits, and business building/networking events.

[7] Joint Report of the SEC's Staff, NASAA, and FINRA September 2007 available at http://www.sec.gov/spotlight/seniors/freelunchreport.pdf.

- Providing a library of pre-approved materials that were reviewed and approved by supervisory and compliance personnel.

- Using a web-based training module for securities professionals to use as reference when they are creating materials for senior-oriented events.

- Performing a minimum number of unannounced compliance visits to seminars on a yearly basis.

- Instituting a "mystery shopper" program where a compliance professional attends seminars unannounced to verify that securities professionals are conducting seminars in accordance with firm policies and procedures.

Firms told us that these are among the mechanisms that they are using to heighten their review and approval processes for the use of marketing and sales materials and sales seminars by their employees with respect to seniors.

- **The Use of Senior Designations**[8]

Regulators have identified the use of senior designations in advertising and marketing materials as a possible risk to investors because a designation may be used to imply expertise or credentials, which may be inaccurate or misleading.[9] Many states are limiting the use of designations.[10]

As a result of increased scrutiny by regulators, many firms have heightened their review and approval processes for the use of senior designations by their employees, and they monitor and limit their use. Some examples of these policies include:

- Reviewing the training materials used by entities or organizations that confer a designation to ensure that predatory sales techniques are not included as part of the training.

- Verifying the appropriate use of designations during field office inspections by reviewing securities professionals' business cards.

- Maintaining a list of approved designations.

- Maintaining a list of prohibited designations.

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8 Some professionals use titles that imply they are experts at helping seniors with financial issues; these titles are known as Senior Designations. *See* '"Senior" Specialists and Advisors: What You Should Know About Professional Designations" at http://www.sec.gov/investor/pubs/senior-profdes.htm.

9 http://www.nasaa.org/NASAA_Newsroom/Current_NASAA_Headlines/8423.cfm#

10 For example, Massachusetts, Nebraska, New Hampshire, Virginia and Washington have restricted the use of senior designations.

- Banning the use of any designation that includes the word "Senior" to help ensure that investors are not confused.

- Permitting the use of designations only if accredited by a national accreditation organization.

Firms told us that they are using these mechanisms to heighten their review and approval processes for the use of senior designations by their employees, and to monitor and limit their use.

G. Obtaining Information at Account Opening

Mr. Investor's Daughter opened an account with Betty Securities Professional over the phone. Daughter informed Betty Securities Professional that she was nearing retirement and wanted to preserve her nest egg. Betty Securities Professional asked Daughter to provide financial information and then filled in the remainder of the new account form herself. Under investment objectives, Betty Securities Professional put "speculative." Betty Securities Professional purchased speculative stocks in Daughter's account.

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, and that the investor's account is managed consistent with the investor's investment objectives. This information includes the investor's age, financial and tax status, and investment objectives.[11]

We noted that some firms use the account opening process to ask questions that may broaden the conversation with investors. For example, some firms are:

- Documenting the response to lifestyle questions such as, "When do you plan to retire?" "How much money do you need to retire in the fashion you want?" "Do you have any other issues or expenses that we should contemplate as you retire?" "Do you have children or grandchildren who are dependent on you financially?" and "Do you have a will and a financial power of attorney?"

- Requiring in-person meetings with the investor to fill out the new account form. This helps to ensure that all investor information on the new account form is accurate and up-to-date.

- Encouraging the investor to bring a trusted family member or trusted individual to meetings.

- Requiring frequent updates of new account information, such as on an annual basis.

[11] Under, for example, NASD Rule 2310.

Firms told us that these steps better help them to obtain information about investors at account opening to aid in determining whether particular investments are appropriate.

H. Ensuring the Appropriateness of Investments

> *Mr. Investor also maintains an account with Betty Securities Professional. Recently, Betty Securities Professional suggested that Mr. Investor re-evaluate his portfolio and shift his investments from income-orientated securities to growth stocks. She also suggested that Mr. Investor add more speculative investments, in order to generate higher returns. Mr. Investor had difficulty understanding the complex structure of some of the recommendations. Currently Mr. Investor's portfolio is diversified and holds bonds and other income-producing products.*

Investors who are the same age can have very different investment profiles, and what is appropriate for one investor may not be appropriate for another investor. However, an investor's age and life stage are important factors in assessing the appropriateness of recommendations for that investor. Some firms are using age in their risk-based supervisory reviews of investors' accounts, as well as other information, to identify accounts or transactions for heightened review. These reviews may include the following:

- Assigning investment objectives to each product that the firm sells in order to aid securities professionals in assessing the appropriateness of the product for a particular investor, and to facilitate comparisons between the objective of the product and the investor's stated investment objective by supervisors and compliance personnel.

- Conducting periodic supervisory interviews with securities professionals to discuss the portfolios of their senior investors.

- Conducting periodic calls with senior investors to confirm whether there have been changes that would impact the investor's account information, such as financial changes or changes to their investment objectives.

- Confirming with the investor directly whether particular transactions were solicited or unsolicited.

- Using financial planning tools that help investors plan for retirement, and anticipate expenses, lifestyle changes, and goals during retirement. The tools provide guidance to securities professionals regarding investment choices that may help the investor reach their stated objectives.

- Using a filtering program based on age and investment objectives to assist securities professionals in selecting appropriate annuity products for investors.

- Requiring special supervisory review of all new account forms reporting investment objectives more aggressive than "income" for investors over a certain age.

- Conducting specialized reviews of new accounts that are opened as guardianship or conservatorship relationships for verification of proper documentation.

Some firms have also implemented product-specific practices or limitations in order to reduce the likelihood that a product will be recommended to an investor for whom it is inappropriate. Some firms have included age-restrictions in their product-specific practices, including:

- Limiting or prohibiting purchases of certain investment products, such as certain structured products, based on an investor's life stage and risk profile.

- Prohibiting purchases of certain variable life insurance products by investors who are above a certain age.

- Imposing an age maximum on certain annuity riders that have actuarially little or no benefit to persons above that age.

- Requiring completion of additional or "targeted" suitability documentation before a transaction is processed.

Other firms have implemented heightened reviews of all variable annuity purchases. For senior investors, deferred annuities may pose special appropriateness concerns depending on the investor's liquidity needs and investment time horizon.[12] To help address these issues, some firms are:

- Creating a central review and approval process for all variable annuity transactions with special focus on purchases with additional riders. These firms have a process, independent of the securities professional, which compares the attributes of the product to the needs of the investor.

- Training a dedicated team of annuity application reviewers to be aware of the special nuances of these products.

- Requiring a heightened review of annuity applications for investors over a certain age in a low tax bracket or with low liquid net worth.

- Requiring securities professionals to fill out an annuity worksheet with the investor's age, net worth, assets, and other factors. This information is used by the firm to assign a risk score to determine whether a more enhanced review is required.

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[12] Broker-dealer firms have specific responsibilities with respect to transactions in deferred variable annuities (NASD Rule 2821).

- Requiring the investor to select an investment time horizon for a variable annuity purchase. This helps supervisors review the variable annuity subaccount allocations for consistency with the designated investment time horizon.

- Requiring securities professionals to complete an individual attestation that they made certain representations and disclosures to the investor in connection with the annuity transaction, including the accuracy of the investor's profile, time horizon and the reason for purchase.

- Implementing a hard block that prohibits variable annuity products to be sold to investors above a certain age based on the time horizon required for the instrument to accrue any benefit to the investor, and/or the length of the surrender period in light of the age group's typical investment time horizon and liquidity needs.

As described above, firms are using a variety of techniques to help ensure the appropriateness of investments for seniors.

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

Mr. Investor, Jr. is 49 years old and plans to retire next year. Mr. Investor's investment objective is conservative and he holds bonds and blue chip stocks in his portfolio. Last month, a highly speculative investment was purchased in his account. The Branch Manager/Chief Compliance Officer noted this apparent discrepancy during his review of transactions and inquired further.

While firms conduct supervisory and surveillance review of the activity in investors' accounts regardless of the age of the investor, some firms told us that they use age or other parameters in their exception reports and other supervisory review activities in order to pay special attention to seniors' accounts. These firms attempt to capture transactions and practices that may particularly impact seniors. Some examples of these practices include:

- Maintaining trade blotters that contain account information (such as age, net worth, investment objective) alongside the transactions for ease in supervisory review.

- Restricting high-risk trading for investors over a certain age unless pre-approved.

- Using exception reports to isolate activities and accounts for additional review, such as IRA distributions above the minimum required distribution, 1035 exchange transactions or investors over a certain age that list "speculative" as an investment objective.[13]

[13] "1035 exchanges" are so named because IRS Code Section 1035(a)(3) provides that no gain or loss shall be recognized on the exchange of one annuity contract for another annuity contract.

- Requiring that all 1035 exchanges and 72T distribution requests be approved by a direct supervisor *and* a central review unit to verify that the exchange is suitable.[14]

- Blocking a transaction if the surrender charge is greater than a pre-determined amount.

Some firms use exception reports to identify and monitor portfolio allocations, commissions, and other issues in accounts. The thresholds used in some of these exception reports are designed to identify risks that are common to senior investors, however, the individual thresholds used differ among firms. Some practices include:

- Identifying accounts of investors over a certain age that generated a commission-to-asset ratio above a certain percentage over a preceding period.

- Identifying accounts of investors over a certain age that generated commissions in speculative or complex investments.

- Identifying accounts of investors over a certain age that have "conservative" or "income" stated as their investment objective, and also have a margin loan balance above a certain threshold, and/or have options trading losses above a certain threshold over the preceding several months.

- Identifying accounts of investors over a certain age that have concentration and margin debit balances above a certain threshold.

- Identifying accounts of investors who are over a certain age, or of any age, in which a change in trading activity has occurred and a power of attorney has recently been added or amended.

- Identifying investors over a certain age with IRA rollover accounts to review activity relative to age, financial information, investment objectives, and risk tolerance.

In addition to performing supervision, surveillance and compliance reviews of investors' accounts, firms also generate targeted reports concerning the activities of their securities professionals to help spot potentially inappropriate or abusive activity relating to senior investors. For example, firms use surveillance reports that identify securities professionals that:

- Sell a threshold number of annuities to investors over a certain age during a specified period.

- Sell a threshold number of annuities with the same rider.

[14] "72T distributions" are so named because IRS Regulation 72t permits early withdrawal from a retirement account without the usual tax penalty (IRS Code Section 72(t)(2)(A)(iv)).

- Have a senior investor base that is above a certain threshold percentage of the total investor base.

- Generate commissions above a threshold amount during a particular period from investors over a certain age.

- Have a certain percentage of their rolling 12-month fees generated by investors over a certain age.

Firms stated that these types of supervisory, surveillance and compliance reviews were helpful to identify potentially inappropriate or abusive transactions or practices with respect to senior investors. As critical as identifying the questionable transaction or activity is effective investigation and follow-up to ensure that the investor is receiving appropriate financial service from the securities professional and the firm.

IV. Conclusion

Given the increasing number of Americans who will need advice and guidance as they near and reach retirement age, the issues described in this Report could not be more important for financial services firms that provide services to senior investors. And, as noted at the outset of this Report, we view the protection of senior investors as a top priority.

This Report describes a myriad of practices used by financial services firms when working with senior investors. Many firms are implementing new processes and procedures aimed at addressing common issues associated with their interactions with senior investors, including with respect to: communicating effectively with senior investors; training and educating firm employees on senior-specific issues (such as how to identify signs of diminished capacity and elder abuse); establishing an internal process for escalating issues and taking next steps when issues or questions are identified; encouraging investors of all ages to prepare for the future; advertising and marketing to senior investors; obtaining information at account opening; ensuring the appropriateness of investments; and conducting supervision, surveillance and compliance reviews focused on senior-specific issues.

By sharing this information, the SEC Staff, NASAA and FINRA hope that it will be helpful to financial services firms that are seeking to ensure that they serve senior investors in an ethical, respectful and informed manner. We also hope that by publishing this Report, financial services firms will be encouraged to identify additional practices that will help them to better serve senior investors.

RESOURCES

Below is a list of supplemental informational materials related to the topics discussed in this Report that may be helpful. We have included this list for your convenience.

1. "*When the Baby Boom Era Becomes the Retirement Explosion: A Securities Compliance Professional's Guide to Protecting Her Firm and Senior Investors,*" (Sept. 2007), National Society of Compliance Professionals, et al, available at http://nscp.org/media/whitepapers/nscp-seniors.pdf

2. "*Assessment of Older Adults With Diminished Capacity: A Handbook for Lawyers,*" (2005), American Bar Association Commission on Law and Aging & American Psychological Association.

3. "*A Financial Professional's Guide to Working with Older Clients,*" AARP and the Financial Planning Association, www.aarp.org

4. American Geriatrics Society at http://www.healthinaging.org/

5. "*Financial Abuse of the Elderly: Risk Factors, Screening Techniques, and Remedies,*" Lori Stiegel, Bifocal, Vol. 23, No. 4 (Summer 2002), Newsletter of the ABA Commission on Legal Problems of the Elderly available at: http://www.abanet.org/aging/publications/bifocal/summer02.pdf.

6. "*Bits Fraud Protection Toolkit Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation*" (February 2006), available at: www.bitsinfo.org/downloads/Publications%20Page/bitstoolfeb06.pdf

7. "*65+ in the United States: 2005*", a special study by the U.S. Census Bureau and the National Institute on Aging, available at: http://www.census.gov/prod/2006pubs/p23-209.pdf

AGENCIES ON AGING

Organization	Website
Administration on Aging	http://www.aoa.gov/
American Association of Retired Persons	http://www.aarp.org/index.html
American Institute of Financial Gerontology	http://www.aifg.org/aboutaifg.cfm
Area Agencies on Aging	http://www.familycaregiversonline.com/aaa_by_state.html
Certified Financial Planner Board of Standards, Inc.	http://www.cfp.net
Elder Law Answers	http://www.elderlawanswers.com/
Financial Industry Regulatory Authority - Smart Tips for Older Investors (Fighting Fraud)	http://www.finra.org/InvestorInformation/InvestorProtection/p019140
H.E.L.P. for Seniors	http://www.help4srs.org/
International Network for the Prevention of Elder Abuse	http://www.inpea.net.
Investor Protection Center (Retirement Calculator)	http://www.sos.mo.gov/securities/mipc/java/calculatorTerms.asp
National Adult Protective Services Association	http://www.apsnetwork.org
National Association of Area Agencies on Aging	http://www.n4a.org/default.cfm
National Center on Elder Abuse	http://www.ncea.aoa.gov
National Committee for the Prevention of Elder Abuse	http://www.preventelderabuse.org
National Consumer Law Center - Seniors Initiative	http://www.consumerlaw.org/initiatives/seniors_initiative/index.shtml
National Council on Aging	http://www.ncoa.org/index.cfm?bType=ns4
National Fraud Information Center	http://www.fraud.org/
North American Securities Administrators Association - Senior Investment Resource Center	http://www.nasaa.org/Investor_Education/Senior_Investor_Resource_Center/
Preventing & Reporting Elder Abuse	http://www.safestate.org/documents/citizens_guide.pdf
Senior Citizen News & Information	http://www.seniorjournal.com
Senior Net	http://www.seniornet.org
Senior Sites	http://www.seniorsites.com/resource.html
Solutions for Better Aging	http://www.agenet.com/
Third Age	http://www.thirdage.com/
U.S. Department of Health & Human Services - Aging	http://www.hhs.gov/aging/index.html
U.S. Government Senior Citizens' Resources	http://www.usa.gov/Topics/Seniors.shtml
U.S. Senate Special Committee on Aging	http://aging.senate.gov/resources.cfm
Securities Exchange Commission - For Seniors	http://www.sec.gov/investor/seniors.shtml

STATE WEBSITES on AGING ISSUES

	Website	Phone	Hotline Information
ALABAMA	http://www.adss.state.al.us/	(334) 242-5743 or 1-800-243-5463	Elder Law Helpline: 1-866-456-3959
ALASKA	http://www.alaskaaging.org/	(907) 465-4879	State Securities Fraud Hotline: 1-888-925-252
ARIZONA	https://www.azdes.gov/aaa/	(602) 542-4446	Elder Abuse Hotline: 1-877-767-2385
ARKANSAS	http://www.arkansas.gov/dhs/aging/	(501) 682-2441	Adult Protective Services Hotline: 1-800-482-8049
CALIFORNIA	http://www.aging.ca.gov/	(916) 419-7500 or 1-800-510-2020	Abuse Hotline: 1- 866-225-5277
COLORADO	http://www.cdhs.state.co.us/aas/	(303) 866-2800 or 1-888-866-4243	Report Abuse: 1-303-866-2800
DELAWARE	http://www.dhss.delaware.gov/dhss/dsaapd/	(302) 255-9390 or 1-800-223-9074	
DISTRICT OF COLUMBIA	http://dcoa.dc.gov	(202) 724-5622	Report Elder Abuse: (202) 541-3950
FLORIDA	http://elderaffairs.state.fl.us/	(850) 414-2000 or 1-800-963-5337	Report Elder Abuse: 1-800-962-2873
GEORGIA	http://aging.dhr.georgia.gov	(404) 657-5258 or 1-866-552-4464	Report Elder Abuse: 1-888-774-0152
GUAM	http://dphss.guam.gov/about/senior_citizens.htm	735-7382 or 735-7384	
HAWAII	http://www2.state.hi.us/eoa/	(808) 586-0100	
IDAHO	http://www.idahoaging.com/abouticoa/	(208) 334-3833 or 1-877-471-2777	Adult Protection Hotline: 1-800-786-553
ILLINOIS	http://www.state.il.us/aging/	(217) 785-3356 or 1-800-252-8966	Adult Protective Services Hotline: 1-800-992-6978
INDIANA	http://www.in.gov/fssa/da/	1-888-673-0002	
IOWA	http://www.state.ia.us/elderaffairs/	(515) 725-3333 or 1-800-532-3213	Abuse Hotline: 1-800-362-2178
KANSAS	http://www.agingkansas.org/	(785) 296-4986 or 1-800-432-3535	Elder Abuse Hotline: 1-800-922-5330
KENTUCKY	http://chfs.ky.gov/Services/Seniors.htm	(502) 564-7043	Adult Abuse Hotline: 1-800-752-6200
LOUISIANA	http://goea.louisiana.gov/	1-800-351-4889 or 1-877-340-9100	Elderly Affairs Hotline: 1-800-259-4990
MAINE	http://www.maine.gov/dhhs/beas/	(207) 287-9200 or 1-800-262-2232	Adult Protective Services Hotline: 1-800-624-8404
MARIANA ISLANDS	http://www.dcca.gov.mp/index.cfm?pageID=4	(670) 233-1321	
MARYLAND	http://www.mdoa.state.md.us/	(410) 767-1100 or 1-800-243-3425	Elder Abuse Hotline: 1-800-917-7383
MASSACHUSETTS	http://www.mass.gov/?pageID=eldershomepage&L=1&L0=Home&sid=Eelders	(617) 727-7750 or 1-800-243-4636	Elder Abuse Hotline: 1-800-922-2275
MICHIGAN	http://www.michigan.gov/miseniors	(517) 373-8230	Vulnerable Adult Helpline: 1-800-996-6228
MINNESOTA	http://www.mnaging.org/	(651) 431-2500 or 1-800-882-6262	Senior LinkAge Line: 1-800-333-2433
MISSISSIPPI	http://www.mdhs.state.ms.us/aas.html	1-800-222-8000	Adult Abuse Hotline: 1-800-222-8000
MISSOURI	http://www.dhss.mo.gov/SeniorServices/	1-800-235-5503	Elder Abuse & Neglect Hotline: 1-800-392-0210
MONTANA	http://www.dphhs.mt.gov/sltc/services/aging/index.shtml	(406) 444-4147 or 1-800-332-2272	Abuse Info Line: 1-800-551-3191
NEBRASKA	http://www.hhs.state.ne.us/ags/agsindex.htm	(402) 471-4623 or 1-800-942-7830	Adult Abuse Hotline: 1-800-652-1999
NEVADA	http://aging.state.nv.us/	(775) 687-4210 or (775) 738-1966	Crisis Call Center: 1-800-992-5757
NEW HAMPSHIRE	http://www.dhhs.state.nh.us/DHHS/BEAS/default.htm	(603) 271-4680 or 1-800-351-1888	Elderly Abuse Reporting Line: 1-800-949-0470
NEW JERSEY	http://www.state.nj.us./health/senior/index.shtml	(609) 943-3437 or 1-800-792-8820	
NEW MEXICO	http://www.nmaging.state.nm.us/	(505) 476-4846 or 1-800-432-2080	Elder Abuse Report Line: 1-866-654-3219
NEW YORK	http://www.aging.ny.gov/	1-800-342-9871	
NORTH CAROLINA	http://www.dhhs.state.nc.us/aging/home.htm	(919) 733-3983	Care Line: 1-800-662-7030
NORTH DAKOTA	http://www.nd.gov/dhs/services/adultsaging/	(701) 328-4601 or 1-800-366-6888	Senior Info Line: 1-800-451-8693
OHIO	http://www.goldenbuckeye.com/	(614) 466-6191 or 1-800-266-4346	
OKLAHOMA	http://www.okdhs.org/divisionsoffices/visd/asd/	(405) 521-2281 or 1-800-211-2116	Adult Abuse Line: 1-800-522-3511
OREGON	http://www.oregon.gov/DHS/spwpd/index.shtml	(503) 945-5921 or 1-800-282-8096	Report Abuse Hotline: 1-800-232-3020

STATE WEBSITES on AGING ISSUES

PENNSYLVANIA	http://www.aging.state.pa.us/	(717) 783-8975 or (717) 265-7887	Elder Abuse Hotline: 1-800-490-8505
PUERTO RICO	http://www.familiesusa.org/resources/program-locator/resources/puerto-rico/page.jsp?itemID=29154750	1-877-725-4300	
RHODE ISLAND	http://www.dea.ri.gov/	(401) 462-3000 or (401) 462-0555	DEA Protective Services Unit: (401) 462-0555
(AMERICAN) SAMOA	http://americansamoa.gov/departments/agencies/taoa.htm	(684) 633-4116 or (684) 633-1251	
SOUTH CAROLINA	http://www.aging.sc.gov/	(803) 734-9886	
SOUTH DAKOTA	http://dss.sd.gov/elderlyservices/index.asp	(605) 773-3656 or 1-866-854-5465	
TENNESSEE	http://www.state.tn.us/comaging/	(615) 741-2056	Report Elder Abuse Line: 1-888-277-8366
TEXAS	http://www.dads.state.tx.us/services/index.html	(512) 438-3011 or 1-800-252-9240	Legal Hotline: 1-800-622-2520
U.S. VIRGIN ISLANDS	http://www.seniorresource.com/virgin.htm	(340) 692-5950 or (809) 772-0930	
UTAH	http://www.hsdaas.utah.gov/	(801) 538-3910 or 1-877-424-4640	
VERMONT	http://ddas.vermont.gov/	(802) 241-2214 or 1-800-642-5119	Report Abuse Line: 1-800-564-1612
VIRGINIA	http://www.vda.virginia.gov/	(804) 662-9333 or 1-800-552-3402	Adult Protective Services Line: 1-888-83-ADULT
WASHINGTON	http://www.aasa.dshs.wa.gov/	1-866-363-4276	Adult Abuse Line: 1-866-363-4276
WEST VIRGINIA	http://www.wvseniorservices.gov/	(304) 558-3317	
WISCONSIN	http://www.dhfs.state.wi.us/Aging/	(608) 266-1865	Elder Abuse Helpline: 1-800-435-7335
WYOMING	http://wdh.state.wy.us/aging/index.html	(307) 777-7986 or 1-800-442-2766	