

NASAA BROKER-DEALER SECTION
STUDY OF SENIOR PRACTICES AND
PROCEDURES, 2016-2017

NORTH AMERICAN SECURITIES
ADMINISTRATORS ASSOCIATION



Introduction

Executive Summary

In 2016, the Investment Products & Services project group under the direction of the NASAA Broker-Dealer Section Committee conducted a survey of broker-dealer practices and procedures applicable to senior investors. NASAA greatly appreciates the cooperation of the more than 60 broker-dealers that responded to the inquiry. This report summarizes findings from the inquiry.

Among the encouraging findings are that virtually all the broker-dealers had both internal processes to identify and internally report suspected diminished capacity or senior financial abuse, and trained their staff on these policies. Some of the findings were concerning however, including that almost half of the respondents did not identify any resource they use to assist their senior clients and only approximately one-third had policies and procedures specifically tailored for senior accounts.

NASAA will continue to advocate for greater protection of senior investors and encourages broker-dealers and other financial services firms to review their policies and procedures regarding seniors in light of the findings and recommendations outlined in this report.

Background

NASAA remains focused on protecting senior investors from fraud and financial exploitation. In 2014, NASAA created a Senior Issues and Diminished Capacity committee dedicated to this issue. The following year, NASAA launched a senior-focused website, ServeOurSeniors.org, to serve as a resource for the financial services industry, policymakers, and senior investors and their caregivers.

In January 2016, NASAA approved the Model Act to Protect Vulnerable Adults from Financial Exploitation. To date, numerous states have adopted the Model Act or substantially similar legislation or regulations, and additional states are considering doing so.¹ NASAA has also

¹ States that passed the Model Act or similar legislation or regulations include Alabama, Arkansas, Delaware, Indiana, Louisiana, Maryland, Mississippi, Montana, New Mexico, North Dakota, Texas, Vermont and Washington. As of May 1, 2017, states that saw bills or regulations similar to the Model Act introduced in their legislatures include Alaska, Colorado, Kentucky, Michigan, Minnesota, New York, and Oregon. NASAA has also published a Guide for Developing Practices and Procedures for Protecting Senior Investors and Vulnerable Adults from Financial Exploitation, available at <http://serveourseniors.org/wp-content/uploads/2016/09/NASAA-Guide-For-Developing-Practices-and-Procedures-For-Protecting-Senior-Investors-and-Vulnerable-Adults-From-Financial-Exploitation.pdf>.

taken a leading role in providing training and support for the proposed federal “SeniorSafe Act.”²

In September 2016, NASAA released preliminary results from a multistate coordinated examination of broker-dealers on issues related to senior investors. Based on 62 exams of at least 39 unique firms, the coordinated exam findings included: (1) approximately 20 percent of examined firms had no supervisory procedures regarding any of the key senior issues that were the focus of the examinations; (2) there appeared to be limited development and use of trusted third party contact forms; and (3) only 24 percent of examined firms required verification of senior clients’ investment profile more frequently than once every three years.³

In addition to the coordinated exam, the Investment Products & Services Project Group (“Project Group”) of NASAA’s Broker-Dealer Section initiated a separate study of senior issues. The Project Group sought information and data from more than 60 broker-dealers regarding account documentation, policies and procedures, training, supervision of seniors’ accounts, and escalation of senior issues. The Project Group reviewed a significant amount of information and data from the broker-dealers and gathered examples of how firms have helped to prevent or resolve issues or problems involving senior clients.

This report summarizes the Project Group’s findings from the study as part of the ongoing dialogue between the brokerage industry and NASAA members on the important issue of protecting senior investors.

Study Highlights

Based on the Broker-Dealer responses:

- More than half (54 percent) of the broker-dealers lacked a formal policy defining senior customers.
- Thirty-four percent of the broker-dealers had a dedicated team responsible for senior-related issues, although a higher percentage (90 percent) had either a dedicated team or at least some type of internal process for addressing senior issues.
- Only 30 percent of the broker-dealers had created senior-specific policies and procedures.

² SeniorSafe Act of 2017, S. 223, 115th Cong. (2017). NASAA’s letter for support for the SeniorSafe Act of 2017 is available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2013/10/NASAA-letter-to-Sen-Collins-Re-SeniorSafe-Act-of-2017-Jan-24-2017.pdf>

³ The preliminary results are available at <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/09/2016-BD-Coordinated-Exam-Preliminary-Findings.pdf>

- Approximately 95 percent of the broker-dealers provided some type of training on senior issues; the most common topic was recognizing the signs of elder financial abuse.
- Almost all (94 percent) of the broker-dealers had a formal process to internally report concerns regarding diminished capacity and/or elder financial abuse.
- 19 percent of the broker-dealers indicated they did not have a decision-maker responsible for reporting concerns to agencies/authorities outside of the firm.
- Reporting by firms to adult protective services occurred in at least 62 percent of internally escalated cases, but less frequently to local law enforcement (4 percent) or state securities regulators (less than 1 percent).
- Almost half (49 percent) of the broker-dealers did not disclose or identify any particular resource they used to assist senior clients.
- Less than half (41 percent) of the broker-dealers had developed a form for customers to identify an emergency or trusted contact person.

Overview of the Study

Members of the Project Group sent inquiries to more than 60 broker-dealers requesting responses to 18 questions about the firms' practices and policies applicable to senior customers. Responses were received in April and May 2016. Certain firms were removed from the analysis because they did not engage in retail securities business and had no senior clients. This report summarizes the responses received from 61 broker-dealers.⁴

The selection of the broker-dealers for the study was random but tended to focus on larger firms. The broker-dealer coordinated exam conducted 62 exams of at least 39 unique firms. A comparison of the two groups of broker-dealers revealed that only 15 firms were subject to both the coordinated exam and this study regarding senior practices and procedures.⁵

⁴ Eight of the broker-dealers received letters that contained fewer than 18 questions. The study's summaries on some questions thus reflect responses from only 53 broker-dealers rather than from all 61.

⁵ Using FINRA's breakdown of firm size (*e.g.*, small = 150 or fewer representatives, medium = 151-499 representatives, and large = 500+ representatives), in the coordinated exam, 26 percent of the firms were small, 12 percent were medium, and 62 percent were large. In the study, by comparison, 7 percent were small, 21 percent medium, and 72 percent large. (These calculations of firm size in the study were based on 58 out of 61 of the broker-dealers, as the number of registered representatives for three of the 61 firms could not be determined from available information.)

Among the questions posed to the broker-dealers in the study were the following:

- Does your firm have a formal policy defining senior customers and if so, what is the age used in that policy?
- Does the firm have a department, committee, task force or other group or person responsible for identifying and addressing senior-related issues?
- Does the firm have a policy to collect the identification of a trusted or emergency contact person?
- Are additional documents required when opening or updating accounts for senior customers?
- How frequently is the investment objective of a senior customer reviewed, updated, and documented by the firm?
- What is the process to report concerns regarding potential diminished capacity and/or elder financial abuse?

The study also sought copies of policies and procedures regarding senior customers, any brochures about diminished capacity or elder financial abuse or exploitation, any forms used to collect the identification of a trusted or emergency contact person, and data regarding the number of cases reported to adult protective services or other authorities.

The following sections of this report summarize findings from the study with respect to:

- supervisory procedures,
- training,
- escalation and reporting of senior issues,
- resolution of senior issues (including resources used to assist senior clients), and
- use of the trusted contact form.

Supervisory Procedures

Who is a senior customer?

The first question posed to the broker-dealers was, “Does your firm have a formal policy defining ‘senior’ customers and, if so, what is the age used in that policy?” Responses were quite varied. Only 36 percent (22) of the firms claimed that they had a formal policy defining senior customers, while the other 64 percent (39) responded that they did not. (It appears some respondents may have focused more than anticipated on the word “formal” within the question: some firms responded they had no formal policies regarding senior investors notwithstanding that their written policies and procedures defined senior customers and

differentiated between seniors and non-seniors in at least some ways.) The 22 firms that stated they have a formal seniors (or “elder”) policy varied their definitions: 10 defined seniors as at or near retirement age; three as 60 and above⁶; seven as 65 and above⁷; and two did not provide an age.

Due to the low number of firms that indicated they have a formal definition of senior customers, the Project Group looked more closely at both the responses to other questions and the exhibits provided in response to other questions. Based upon this review, the study found six additional firms that defined senior or elder investor (despite having indicated that the firms had no such formal definition). Adding these six firms increased the total number of firms with a definition of senior customer to 46 percent (28) of firms (see Chart 1). The conclusion that 54 percent (33) of the broker-dealers lacked a formal policy defining senior or elder investors suggests firms need to provide more information to their registered representatives and other staff regarding who is considered a senior customer.

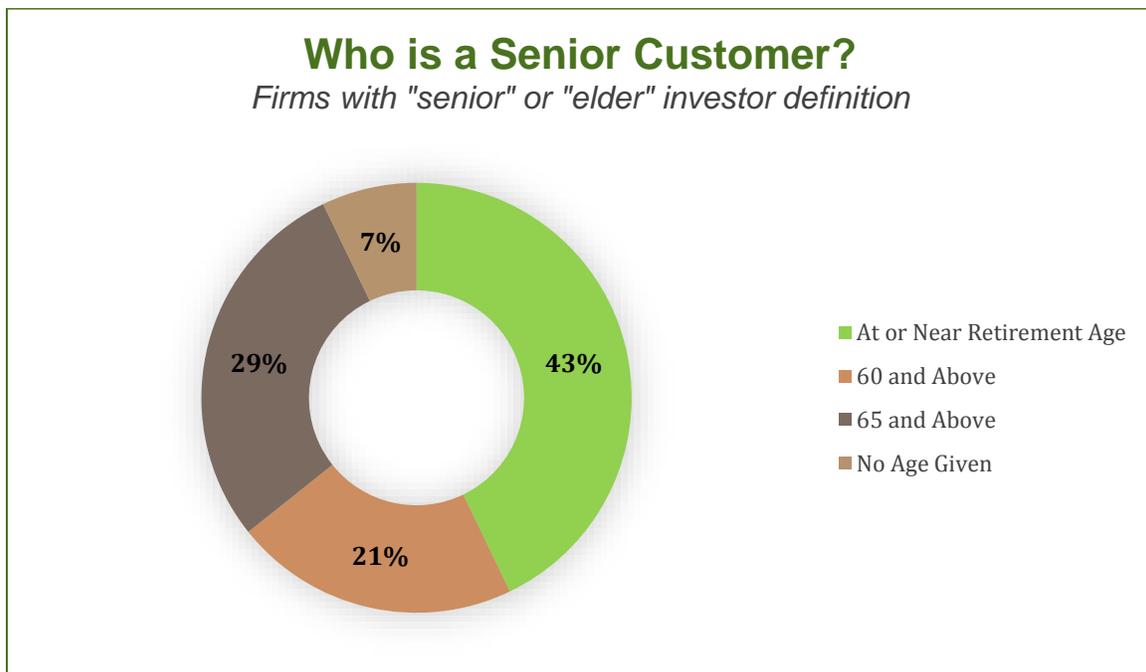


CHART 1

⁶ One firm in the “60 and above” group defined senior as, “Investors over the age of 60 or older, have retired or plan to retire within the next five years.”

⁷ Two firms in the “65 and above” group added, “unless different age specified by state law.”

While not defining “senior,” some firms indicated that they had policies and procedures geared toward the protection of vulnerable clients or clients with diminished capacity, and various materials provided by these firms included a definition or description of vulnerable adult or diminished capacity. Including those firms that have definitions of vulnerable clients and/or diminished capacity, 65.5 percent (40) of the broker-dealers used a definition of either senior or vulnerable adult and/or diminished capacity, or had definitions for both seniors and other vulnerable adults.

Notably, a basic definition of senior was included in the written policies and procedures of fewer than half of the broker-dealers. A few firms stated that they were in the process of revising their policies and procedures to include more specific references to seniors. For instance, one firm planned to update its written supervisory procedures to define any person who has retired or is near retirement age, or who is 65 years old or older, as a senior investor. Another firm was in the process of finalizing a Vulnerable Client Protection Program which considered clients 65 or older at potentially higher risk of financial exploitation.

In our opinion, firms that currently lack a definition of who is a senior customer should consider providing additional guidance in their policies and procedures with respect to both seniors and other vulnerable adults. This information would also be beneficial for those firms operating in states with laws mandating reporting of suspected exploitation of vulnerable adults and individuals over a specified age.

Who is responsible for identifying and addressing senior-related issues?

The study asked whether firms had “a department, committee, task force or other group or person” responsible for identifying and addressing senior-related issues. The review of the responses to this question sought specific references to a group or person serving as a dedicated resource for handling these issues. For instance, one firm’s Vulnerable Client Program provides “dedicated support and guidance to help resolve issues with vulnerable clients.”

The study found that the broker-dealers, especially the larger firms, provide support to their clients and registered representatives through teams or groups with names such as Diminished Capacity Team; Vulnerable Adult Project Team; Elder Financial Exploitation Group; Vulnerable Adult Support Group; Elder Client Initiatives Team; and Financial Exploitation of Elder or Vulnerable Adults Escalation Group.

Thirty-four percent (21) of the responding broker-dealers had a dedicated team responsible for senior-related issues. In some instances, the senior-focused group served as a centralized response unit, with dedicated email addresses and phone lines, fielding referrals from the

FINRA Senior Helpline, working with other departments, developing training, and making reports to adult protective services. However, it was not always clear whether the senior-focused teams were handling escalation issues as an intake location on a day-to-day basis or had more general compliance responsibilities. Other firms are moving in the direction of assembling cross-departmental senior investor task forces or committees. Overall, 55 percent (33) of the broker-dealers had a specific internal process for addressing senior issues that involved compliance, legal, or departments (such as AML or Financial Intelligence), while the remaining firms (28) referenced their compliance and/or legal processes more generally. Clearly, firms are considering the need to address senior issues, and this process appears to be ongoing.

In total, 90 percent (55) of the broker-dealers described some level of staffing to address senior-related issues, though fewer than half gave titles to their staff reflecting this focus. Only a handful of firms indicated that they had no one responsible for identifying and addressing senior issues, typically due to the small size of the firm. Interestingly, about half of the firms that distinguished seniors in their policies did not have staff designated to senior issues, while about half of the firms with such designated staff did not have what we considered formal policies defining seniors.

To the extent firms can establish teams to focus on seniors and other potentially vulnerable clients, these teams can serve as an important internal resource for registered representatives and other front-line staff in helping to address the needs of this growing investor population.

To what extent do policies and procedures focus on senior customers?

The study sought copies of policies, procedures, or guidelines regarding senior customers and, more specifically, invited firms to highlight those procedures concerning suitable recommendations to seniors, communications with seniors, and escalation of concerns regarding diminished capacity and/or elder financial abuse or exploitation. Thirty percent (18) of the broker-dealers responded affirmatively that the firm had senior-specific policies and procedures. Only 11 percent (7) of the firms responded that they did not have any procedures specifically addressing suitability for senior clients, communications with seniors, or escalation procedures for diminished capacity or financial exploitation.

The quality and source of senior-specific procedures varied greatly among the firms. Some firms provided written supervisory procedures that addressed senior issues in great detail. Other firms only briefly mentioned an issue or procedure as a guideline in the firm's training materials or an internal memorandum. Due to the somewhat low percentage (i.e., 30 percent)

responding affirmatively to this question, the study more closely examined the firms' policies and procedures regarding the three issues listed above and found the following:

Suitability: Of the 18 firms that had senior-specific policies, all but one had procedures relating to suitability. Sixty-seven percent (29) of the 43 firms who responded that they did not have a formal senior policy still maintained policies related to suitability for senior investors. As a result, a total of 75 percent of the broker-dealers had procedures in place regarding the suitability of investments for seniors. The substance of the suitability procedures varied greatly however. Some firms only provided a reminder that certain suitability information, such as age, income, and expenses, should be emphasized when recommending an investment for a senior client. Other firms provided strict limitations on what products the firms allow to be sold to clients of a certain age, primarily applicable to variable annuities and alternative investments. Whether a firm responded affirmatively that it had a formal policy for seniors did not correlate with the extensiveness of its suitability procedures.

The study found numerous examples of procedures that reflected the firms' diligence with respect to suitability policies regarding senior clients. For instance, one firm discussed the minimum amount of cash reserves required for seniors and enhanced scrutiny for certain levels of product concentration depending on the client's age. The firm's written supervisory procedures directly addressed many factors in the suitability determination for senior clients (e.g., among many others, current and future prospects of employment/income and future health care costs). At another firm, representatives were reminded to pay particular attention to certain product features such as withdrawal penalties, tax consequences, higher fees, lack of liquidity, and the loss of features upon exchange or transfer. Written procedures at a third firm provided financial considerations for seniors and vulnerable adults, and addressed senior-related topics under headings such as "Market, Inflation and Issuer Credit Risk," "Fair and Balanced Picture," and "Certain Products and Strategies That May Pose Added Risks to Senior Investors."

Communications: About 67 percent (43) of the broker-dealers have a policy regarding communications with seniors. This lower percentage (when compared to the 75 percent with suitability procedures) is attributed to the firms that did not have a formal senior policy.⁸ Across the board, communications guidelines often addressed power of attorney appointments, emergency contacts, the use of seminars targeting senior investors, and the improper use of titles implying an expertise in investments for seniors. Some firms suggested their registered

⁸ All but one of the 18 firms with senior-specific policies had procedures related to communications with senior clients, and 56 percent (24) of 43 firms without a senior policy nonetheless had some type of communications guidelines.

representatives make accommodations for older clients whose hearing, vision, or mobility is impaired.

The study found numerous examples of procedures that reflected the firms' diligence with respect to communications policies regarding senior clients.

One firm's procedures addressed the importance of determining whether a senior client is able to understand what the registered representative is suggesting. For example, the firm suggested that the representative use open-ended questions to help verify that the customer understood the discussion. The procedures discussed the importance of recognizing physical changes such as hearing loss and suggested that representatives speak clearly and be aware of background noise, which should be eliminated if possible. Also discussed in depth were concerns related to marketing to seniors through "senior professional" or similar designations and sales seminars.

Another firm's policies on communications with seniors specifically described actions to be taken by the representative when communicating with seniors. The firm's policies and procedures suggested that representatives increase the frequency of communications with older clients, allow for extra meeting time, send follow-up letters, reiterate what was discussed during meetings, use plain language and large font without financial jargon, advise clients to bring a trusted family member to meetings, use a third-party authorization form, and document all discussions and recommendations. Written policies also suggested asking the client whether the client has a power of attorney and suggesting the client prepare for the future by securely maintaining a list of contacts and financial information in case of an emergency.

The policies for communications with seniors at a third firm went into great depth, instructing representatives to properly communicate their role and provide a fair and balanced picture of an investment's risks, costs, and benefits. Pursuant to its interaction guidelines, the firm prohibited the use of language that could create an artificial sense of urgency or images that convey "ideas of wealth, such as golden eggs, pots of gold, fists full of cash, and similar images." The guidelines included ensuring a quiet, distraction-free environment, speaking slowly/clearly, allowing customers to hold documents, breaking complex topics into shorter items, providing clear takeaways, and confirming the customer understands the discussion. The firm also prohibited seminars from occurring at nursing homes or assisted living facilities.

Escalation: Approximately 72 percent (44) of the broker-dealers reported having an escalation procedure in place for diminished capacity or elder financial abuse or exploitation. Of the 18 firms that had a formal seniors-related policy, 100 percent had escalation procedures for elder financial exploitation while 89 percent (16) had similar procedures for diminished capacity. Sixty-seven percent (29) of the 43 firms without a formal seniors-related policy had

an escalation procedure for elder financial abuse or exploitation, and 63 percent (27) of those same 43 firms had an escalation procedure for diminished capacity. Interestingly, one firm had a diminished capacity procedure but did not have a financial exploitation procedure. It is important that firms address both issues.

The study also found numerous examples of procedures that reflected firms' diligence with respect to escalation policies. Firms typically required that representatives be sensitive to the possibility of diminished capacity and/or financial exploitation, and that concerns be raised to a supervisory principal or other designated person or team. According to firm procedures, suspected abuse issues were escalated within the firm and reported to appropriate state agencies while the firm took appropriate action to restrict account activity or comply with court orders. Some firms provided lists of red flags and other considerations in determining whether escalation is necessary and/or provided resources regarding any state requirements for escalation.

The level of detail in the procedures highlighted above helps representatives consider how best to interact with older clients. Some firms had comprehensive and detailed policies and procedures concerning seniors and the issues of suitability, communications and escalation. In contrast, there were firms with minimal policies related to senior clients. Typically, these firms did not have any formal written supervisory procedures directly related to senior investors. If senior issues were addressed, they might be found in training or PowerPoint materials, but the concepts had not yet worked their way into more formal policies and procedures. Moreover, where there were only minimal guidelines for firm personnel, the comments and suggestions concerning senior clients were general in nature (for instance, reminding representatives that suitability should be considered for seniors or generally suggesting regular communications).

Overall, the study found that 56 percent of the broker-dealers addressed all three issues of suitability, communications, and escalation with respect to their senior clients but that 11 percent lacked procedures addressing those matters. While the preliminary findings in the broker-dealer coordinated exam report were based only on the review of written supervisory procedures, the study reviewed all firm documentation that was produced for indications of the firm's approach to the three issues. Credit was given by the study for policies located outside of the firm's written supervisory procedures. However, this process confirmed the importance of updating the firm's written supervisory procedures to incorporate senior-specific policies that have been developed but may be located and addressed somewhere other than the firm's formal procedures.

How are accounts supervised for senior customers?

The study asked how frequently the investment objective of a senior customer is reviewed, updated, and documented and whether the frequency was different for customers who are not seniors. While all firms updated and documented investment objective changes as they were made aware of them, the frequency of verification and documentation did not change or increase for seniors.

For all customers, the investment objective of the customer is of course reviewed when a new account is established. Nearly 52 percent (31) of the broker-dealers stated that account information verification letters are sent to customers to verify the accuracy of customer information within 30 days of account opening. Only 18 percent of the broker-dealers had adjusted their account opening documents for senior clients.

About 80 percent of the broker-dealers sent the same or similar account information verification letter to clients at least every 36 months. Clients were encouraged to review the information for accuracy and update the information if necessary, either by correcting it on the form or contacting their broker-dealer agent.

Some firms reviewed clients' investment objectives more frequently than the above-mentioned broker-dealers:

- 19.7 percent (12/61) updated the customer's investment objective after a life changing event.
- 13.1 percent (8/61) sent the verification letter annually.
- 11.5 percent (7/61) updated the customer's investment objective at the transaction level.
- 9.8 percent (6/61) reviewed a customer's investment objective anytime the customer calls.
- 4.9 percent (3/61) reviewed the customer's investment objective "periodically."
- 3.3 percent (2/61) printed the investment objective information on every customer account statement.

Although the frequency of verification and documentation of a customer's investment objective did not change for senior customers, a customer's age and/or a change to a more aggressive investment objective would trigger account alerts and some type of heightened review by supervisors at 16 percent (10) of the reviewed firms.

But those triggers did not appear to exist at the other 84 percent of the firms reviewed. When asked how the firm monitors for changes to a senior customer's financial objectives, including but not limited to risk tolerance, liquidity needs, and investment time horizon, the large

majority of firms (81 percent⁹) did not have any senior-specific review processes to monitor for these changes. For the small minority engaged in such monitoring, some of their practices included the following activities:

- Using additional forms to collect financial objectives on product specific purchases and using a suitability surveillance system that flags transactions. One of the flags was based on preset thresholds of certain types of securities if a client was at least 65 years old.
- Conducting a heightened review for clients over 65 and another again for clients over 80.
- Monitoring correspondence as one of several methods used to detect changes to risk tolerance and liquidity needs.
- Implementing a heightened suitability and escalation process if a client is over 65 and behaves erratically.
- Creating a working group to better monitor senior's financial objectives.
- Reviewing senior accounts for potential problematic activity.
- Using electronic surveillance systems that flag transactions for clients over 65 that are over threshold limits and allow for suitability verification prior to order execution.
- Performing additional reviews of client trades to verify they meet client's investment objectives.

The study asked how firms monitor the sale and the possible concentration of complex products (such as REITs, structured products and other alternative investments) in the portfolios of senior customers.¹⁰ Nineteen percent (10) of these firms did not offer complex products to any of their customers. Otherwise, the following responses were noted:

- 20 percent utilized age based guidance for review procedures and many had lower parameters for senior clients. Some products had an undefined maximum age, while other firms varied their senior definitions for complex products between ages 65 and 80.
- 17 percent had point of sale monitoring. This took age into consideration, but relied more heavily on concentration of complex products.
- 17 percent utilized automated surveillance systems to flag accounts and transactions for further review and approval.
- 11 percent required home office or principal review of suitability for the sale of complex products.
- 4 percent used monthly reports or post transaction scoring systems that monitor potential issues with senior investors.

⁹ The review of this question included 58 responses – 81 percent represents 47 firms.

¹⁰ This question was not posed to all of the broker-dealers and only 53 responses were recorded.

- 2 percent utilized a semi-annual review of senior customers that have concentrations in complex products.

Overall, a majority of firms that offered complex products monitored and alerted management to potential suitability issues in some way. While many considered age a factor, the main concern (with respect to all customers) appeared to be concentration levels.

Training

Do firms provide training on senior issues to their registered representatives?

The study inquired whether firms provide training regarding any of the following topics: suitability issues for senior investors, communications with seniors, requesting emergency/trusted contact forms, recognizing the signs of diminished capacity, and/or recognizing the signs of elder financial abuse.

Approximately 95 percent of the broker-dealers provided some training to their registered representatives on the senior issues noted above, although the depth of training varied considerably. About 5 percent of the firms with training on senior issues provided training on only one of the five topics specified in the NASAA inquiry. Thirty-two (32) percent provided training on all five topics.

The most common topic of training was recognizing the signs of elder financial abuse, with over 88 percent of the firms providing training on this issue. The topic of recognizing the signs of diminished capacity was also common, with approximately 80 percent of the firms providing training on it. The least common training topic was requesting emergency/trusted contact information, with only about half of the firms addressing the topic in training sessions.

Several firms had mandatory stand-alone training courses on topics relating to senior investors. Training on senior investors was often included in both new hire training and in firm element continuing education training for all registered representatives. Annual compliance meetings often included information on senior investors, as did newsletters and compliance notices or bulletins. One of the most creative methods, as described by a firm, of keeping registered representatives aware of these issues was the inclusion of relevant information in computer screensavers.

Among the broker-dealers that had developed a form for the identification of an emergency or trusted contact person, the guidance provided to each firm's registered representatives regarding the trusted contact form varied widely.

On one hand, four firms simply considered the request for contact information to be self-explanatory and additional training to be unnecessary. On the other, many other firms provided guidance regarding the form on their internal websites and/or in their procedures manuals with FAQs addressing issues such as whether the form replaces a power of attorney or a third-party trading authorization. Firms also trained at annual compliance meetings and used compliance alerts, field bulletins, and Firm Element training to provide guidance and training on the trusted contact form.

Firms were clearly aware of the need to provide training to their registered representatives on the various issues concerning senior clients. However, the rigorousness of the training varies among firms. While many firms are making great strides in providing training designed to protect their senior investors, other firms appear to be further behind.

Escalation and Reporting of Senior Issues

What is the process for escalating senior issues?

Registered representatives and other firm personnel can more easily escalate senior issues if the escalation process is clearly understood. Of the 61 broker-dealers reviewed during the study, a handful had no formal process to internally report concerns regarding potential diminished capacity and/or elder financial abuse. The vast majority – 94 percent – had an escalation process. These escalation methods are summarized in Chart 2 below.

Escalation process for RRs and firm personnel	Number of firms with this among multiple escalation methods	Number of firms with this as the ONLY method of escalation
Contact Supervisor / Manager	22	6
Contact Compliance Department	11	14
Notify Risk / Fraud department, other internal group, AML / BSA group	17	5
Contact Hotline – phone and/or email	3	3
Complete internal form	3	0
Report to APS	0	1

CHART 2

Who reports senior issues to agencies/authorities outside of the firm?

Once an issue has been escalated within a firm, someone should have the responsibility to report appropriate cases to an agency or authority outside of the firm, such as adult protective services. However, 19 percent (12) of the broker-dealers indicated they did not have an identifiable decision maker at the end of the escalation process. Several firms designated or included registered representatives as the decision makers. Otherwise, the decision to report concerns to outside agencies or authorities was most often made by an internal group (26 percent) or by the Legal or Compliance departments either solely or in combination with others (42 percent), as shown below in Chart 3:

Decision maker to report concerns	Number of firms reporting type of decision-maker
Internal Group ¹¹	16
Compliance Department with other internal group	10
Legal Department with other departments and/or Firm officer input	8
Legal Department ONLY	4
Compliance Department ONLY	4
Senior Management	4
Registered Representative	3

CHART 3

In response to queries regarding reporting to government agencies, fifty-two percent (32) of the examined broker-dealers did not report any cases concerning seniors. A few firms confirmed making reports but did not provide the number of reports made. Based on the data collected from the remaining 27 firms, broker-dealers reported a total of 2,293 senior cases in 2015. (Another 219 cases were reported during the first two months of 2016.) See Chart 4.

¹¹ Internal Groups were identified with terms such as Vulnerable Client Program, Financial Crimes, Investigator, Elder Financial Exploitation Group, AML Officer, and Corporate Investigations Department.

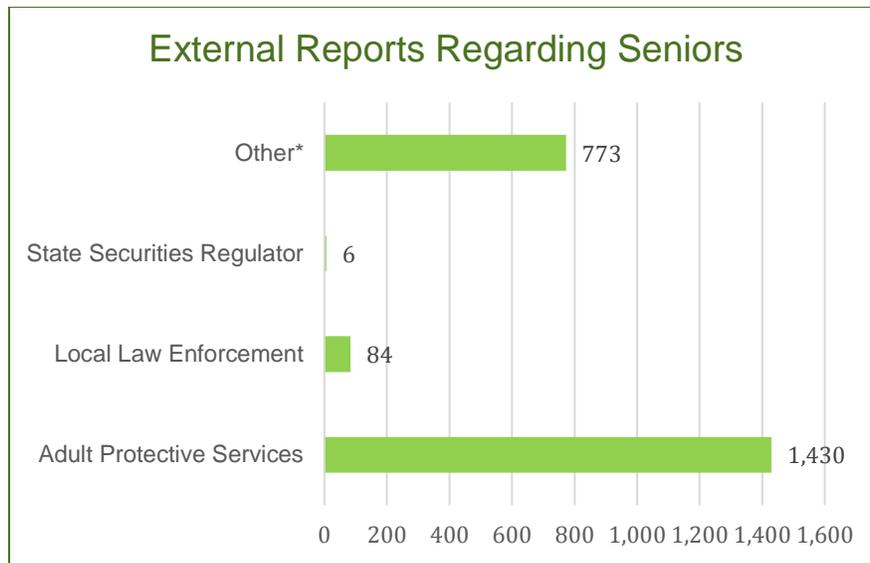


CHART 4

(**Five were reported to FinCen; the other four to the FINRA Senior Hotline, the New Jersey Probate Court, the State Attorney General, and the customer's attorney. For 764, no reporting breakdown was provided.*)

Due to an interest in the types of senior issues encountered by broker-dealers, the study collected data concerning the age of the customers and the type of issue escalated at the firm. The age of the customer was provided for 1,326 cases and the 81-90 year-old age group accounted for 45 percent of those escalated matters; followed by 71-80 years (27 percent), 91-100 years (16 percent), 61-70 years (10.5 percent). Less than 1 percent of the escalated matters involved customers in other age groups: under 50 years, 50-60 years, and over 100 years.

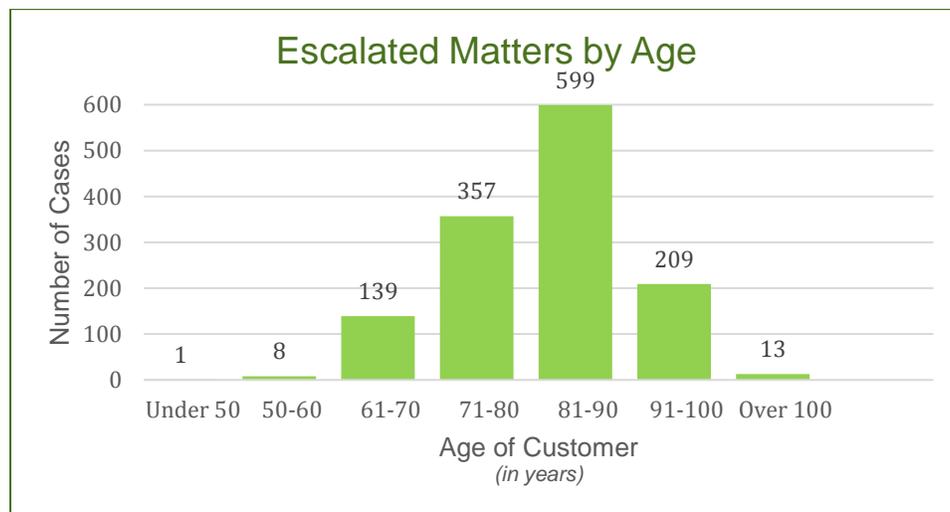


CHART 5

Financial abuse/exploitation by third parties and family members, as well as diminished capacity, dominated the top five issues and accounted for 78 percent of the external reports. The types of reports are summarized in Chart 6 below.

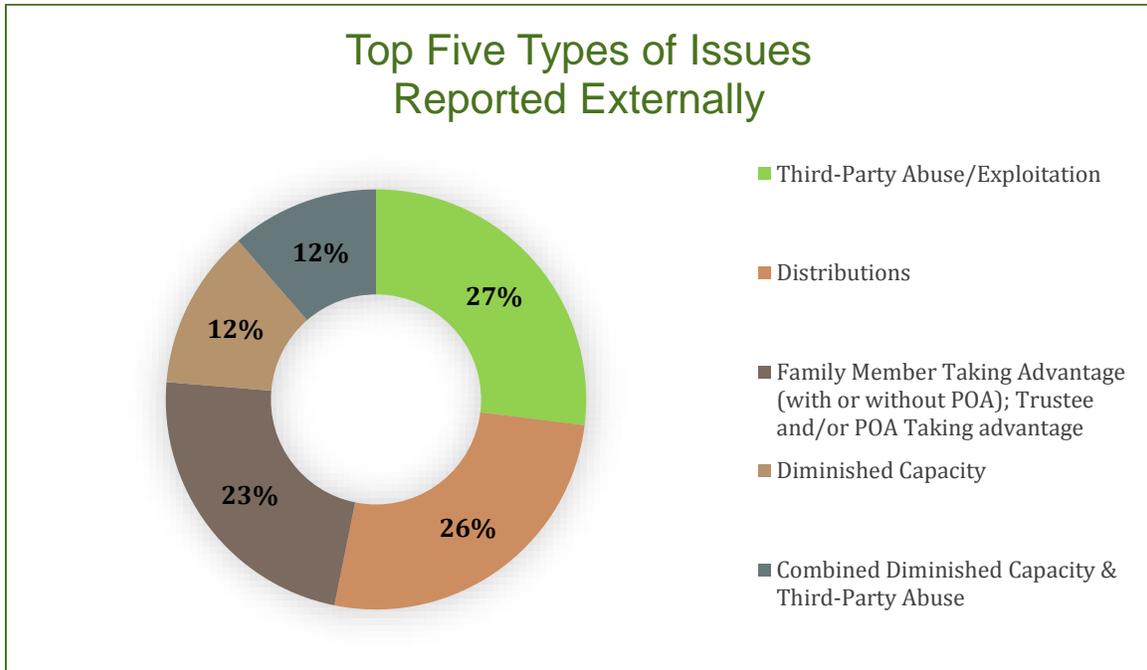


CHART 6

(Additional issues reported in escalated matters include: fraud, 6.3 percent; elder exploitation, 5.7 percent; friend / housekeeper / caretaker taking advantage/exploitation, less than 1 percent; uncharacteristic activity, less than 1 percent; physical/verbal abuse, less than 1 percent; and excessive withdrawals, less than 1 percent.)

Resolution of Senior Issues

How have firms helped to prevent or resolve senior issues?

The study collected examples of how broker-dealers prevented or resolved senior issues. About 77 percent (47) of the broker-dealers offered specific examples, and a total of 100 specific examples were submitted.¹² Fifty-nine of these examples involved attempts by family members or third parties to access senior customers’ accounts or funds or other potential forms of unauthorized access, while a further 28 involved various other potential scams (such as

¹² About half of the firms providing examples gave a single example; 36 percent of those providing examples gave 2-3 examples and 15 percent had 4 or more examples.

scams involving alleged lottery/sweepstakes winnings, sweethearts or online fiancés, collections, IRA accounts, or cybersecurity attacks).

The examples demonstrate the challenges faced by the broker-dealers when their clients suffer from diminished capacity and/or are the victims of elder financial abuse. In one example, the firm contacted adult protective services because an elder client on a church ministry trip met a prisoner (who was serving a long sentence for murder) and was attempting to add him as a beneficiary to her million-dollar account. In another situation, the firm contacted a spouse with power of attorney and locked down the account of a senior client that had asked to liquidate an IRA and immediately distribute the funds to charity because “the world was coming to an end.”

Additional scams the broker-dealers said they thwarted:

- A 68-year old client believed someone needed assistance to collect a \$7 million settlement that was delayed due to identity theft.
- An elderly client thought that a large inheritance was coming from China due to the death of a business partner.
- A 67-year old client was solicited for donations with fake hospital emails regarding a child’s surgery.
- An elderly client was tempted to assist a person in Ghana in moving money to the United States.
- A client wanted to send a wire transfer to a European woman needing money to come to the United States.
- A client tried to send \$200,000 in a \$4.5 million sweepstake scam.

When might a customer’s account be restricted from withdrawals?

A subset of 53 firms was asked when a customer’s account might be restricted from withdrawals. Of the 53 firms, more than 77 percent (41) responded that they might restrict withdrawals from a customer’s account if there is a suspicion of financial abuse or fraud. Another 9 percent responded that they may question the customer but would not refuse the transaction. Approximately 7.5 percent would rely on a case-by-case consideration and 15 percent would impose a restriction only based on a court order. Also in the minority, 17 percent of firms would restrict a withdrawal based on a belief that the customer was not competent.

The authority to restrict the account from withdrawals typically lies with home office personnel. For 45 percent of the broker-dealers, the authority to restrict withdrawals is

handled by the chief compliance officer, general counsel or other operational senior management. Firms have also created specialized groups and/or teams that watch for potential financial abuse or suspicious activity in senior accounts. Examples of these groups/teams include: Risk and Fraud Team; Vulnerable Client Program; Financial Intelligence Department; Corporate Security Team; Fraud Investigation Unit; Vulnerable Adult Support Group; and Customer Response Center. At 15 percent of firms, these specialized risk teams retain the authority to restrict accounts from withdrawals.

Firms should assess the approval structure and process for restricting withdrawals. A firm should have clear policies and procedures in place. However, a highly prescriptive process where only the highest-level employees are authorized to initiate action to restrict withdrawals may hinder timely efforts to protect senior investors from financial loss due to exploitation or diminished capacity.

What resources are used by firms to assist senior customers?

In an ideal environment, both firms and customers would be aware of the resources available to assist them with issues affecting senior and other vulnerable investors. The broker-dealers were asked what resources they use to assist senior clients. About 49 percent (30) of the firms did not disclose or identify any particular resources. The other 31 firms stated that they used the following resources noted in Chart 7, the most common being state senior social service agencies, the FINRA Securities Help Line for Seniors, and the firm’s website with links to various organizations:

Resource	Number of firms using resource
State’s senior social service agencies (Adult Protective Services – APS)	7
FINRA Securities Help Line for Seniors	6
Firm website with links (e.g., FINRA, AARP, alz.org)	6
Internal education / training	5
State websites (regulations / reporting and preventing elder abuse)	5
FINRA resources	5
SEC resources	5
FBI (internet crime complaint center), Homeland Security, FinCen	4
NASAA website / resources	4

SIFMA membership, resources, conferences	4
FTC – identity theft	3
Law enforcement	3
Customer's family members	2
Customer's legal counsel	1
Internal fraud investigators	1

CHART 7

Nearly 28 percent (17) of the broker-dealers had, or were developing, client handouts relating to the subjects of diminished capacity and/or elder financial abuse or exploitation. Only one of the responding firms required that a senior handout be provided to new senior clients.

When asked about the usefulness of contact with state securities regulators, 68 percent (42) of the broker-dealers disclosed no state regulator contact with respect to senior matters. Of those firms that have contacted state securities regulators, the feedback was mixed. Firms describe instances in which state securities regulators, who share the interest in protecting seniors, had been helpful in providing guidance. However, firms also reflected on limitations imposed by privacy regulations, the confidentiality of investigations, and differences in state laws.

Use of the Trusted Contact Form

Are firms using a trusted or emergency contact form?

Nearly all (98 percent) of the broker-dealers indicated that they did not require identification of a trusted or emergency contact person for all customers. However, about half of the firms (29) indicated there was a process in place or forms available by which registered representatives could collect emergency contact information on an optional or voluntary basis. Of these 29 firms, for example, one had a project underway that would establish a formal required request for emergency contact information upon client account opening. Another firm was in the process of developing written supervisory procedures that would “make efforts” to collect such information, while a third firm stated that codification of a trusted or emergency contact policy would be considered by a Senior Investor Task Force.

Almost 41 percent (25) of the broker-dealers reported that they had developed a form for customers to identify an emergency or trusted contact person. The form is most often a separate document, but in some instances, the information is collected within a section of another form such as an account application. Several firms indicated that they were in the process of developing a trusted or emergency contact form. Among the remaining firms

without a trusted contact form or the development of one, a small group (*i.e.*, fewer than 10) stated that they were monitoring relevant proposed regulations or were waiting for further guidance from FINRA or NASAA.

The trusted contact form was frequently identified by the broker-dealers as a way to contact designated individuals when concerns arose regarding the client's whereabouts, health or welfare, or when the identification of a legal guardian, executor, trustee, or holder of a power of attorney was necessary. One firm titled the form, "Diminished Capacity Directive." Another firm required its registered representatives to inform their field supervision directors of the reasons for contacting a designated alternative contact person before making the contact.

The broker-dealer coordinated exam reported limited development and use of trusted contact forms. Although the majority of the broker-dealers had not yet developed a form for customers to identify an emergency or trusted contact person, the issue appeared to be one which firms recognize as important and deserving of their attention. Now that the SEC has approved amendments to FINRA Rule 4512, firms that previously had a "wait and see" approach should be taking the necessary steps to bring themselves into compliance with the rule.

FINRA amended Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person for a customer's account; and adopted a new Rule 2165 (Financial Exploitation of Specified Adults) to permit members to place temporary holds on the disbursement of funds or securities from accounts where there is a reasonable belief of financial exploitation.¹³

Under Rule 4512, each firm shall maintain the "name of and contact information for a trusted contact person age 18 or older who may be contacted about the customer's account." The rule does not prevent accounts from being opened without this information provided reasonable efforts are made to obtain it. In updating current accounts, firms are required to periodically update where appropriate the name of and contact information for a trusted contact person. Rule 2165 directs the firm to disclose to a new client that the firm or an associated person is authorized to contact a listed trusted contact person and disclose information about the account in order to address possible financial exploitation.

Rule 2165 allows firms to temporarily hold client disbursements for 15 days and if extended, another 10 days. The temporary hold may be "terminated or extended by a state regulatory or

¹³ The SEC approved the rule changes on February 3, 2017, with an implementation date of February 5, 2018, to give firms time to develop and produce supervisory procedures, training, and recordkeeping requirements.

agency of competent jurisdiction or a court of competent jurisdiction” during the hold period established by the firm. The trusted contact person is to be contacted within 2 days of the disbursement hold “unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult.”

The NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation similarly contemplates delays in account disbursements where there is a reasonable belief of suspected or attempted financial exploitation. Under the NASAA Model Act, a disbursement delay expires in 15 business days; however, the delay can be extended for 10 additional business days by a state securities regulator or adult protective services. Any further disbursement delay must be ordered by a court. In states where the Model Act has been adopted, broker-dealers who are contacting a trusted contact person within 2 days of the disbursement hold in accordance with FINRA Rule 2165 will also, within 2 business days, notify adult protective services and their state securities regulator.

Conclusion

As the U.S. population ages, the financial industry has recognized that a disproportionate amount of financial crime and abuse is perpetrated upon the elderly and other vulnerable adults. In response to the study, many of the broker-dealers expressed their interest in making senior investors a top priority and in keeping their training and procedures up to date with securities regulation. A few firms described their involvement in the regulatory community in relation to senior issues, noting that the firms’ and states’ interests are closely aligned with respect to the protection of senior investors. One firm requested an “increased focus on harmonization of the applicable rule sets at the state, federal and industry levels.”

A benefit of NASAA’s inquiry to some of the broker-dealers was that either the inquiry in general or some of its specific questions prompted the firms to take or consider some further action regarding senior-related procedures. For instance, one firm stated, “This effort of reading through the questions posed by the state and the development of this response has prompted the firm to explore making additional resources available to the senior public as well as to its representatives and to explore areas in which its controls can be strengthened pertaining to senior investors.”

In sum, state securities regulators should continue to encourage firms to adopt policies and procedures and develop internal teams or departments dedicated to issues regarding seniors and vulnerable adults.

For there to be ongoing progress in serving our aging population, NASAA and its members recommend that firms consider improving their policies and procedures regarding the following:

- 1) Clear definitions of “seniors” and “vulnerable adults”; firms should evaluate the need for definitions if they do not exist, taking into consideration those states that have adopted the Model Act;
- 2) Dedicated staff resources responsible for senior-related issues;
- 3) Guidance for communications with seniors and other senior-specific policies and procedures;
- 4) More frequent updates of account documentation for seniors, including investment objectives;
- 5) Heightened suitability review for seniors that is triggered by red flags such as investments in higher risk or complex products, account concentrations, or significant changes to account activity;
- 6) Training regarding senior issues including the identification and escalation of senior financial exploitation and diminished capacity;
- 7) Use of a trusted contact form and other resources to assist senior investors;
- 8) Proper escalation protocols, including clear and specific escalation instructions for registered representatives and other firm personnel, and the designation of decision makers for reporting concerns outside of the firm;
- 9) How and when to report matters to adult protective services, law enforcement, or state securities regulators; and
- 10) When to delay account disbursements as a result of escalated concerns.