

FMA 2025 Securities Compliance Seminar

Elder / Vulnerable Adult Financial Exploitation

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Tips to Protect Your Firm When Customers Seek to Hold Firms Liable for Scams

(These are relevant only if the no one at the
Firm was involved in the scam.)

Claimants' counsel often “weaponize” firms' training against them in arbitrations

- They compare fact patterns from training to actual (or alleged) fact patterns and asserts that the scam was or should have been “obvious” to the firm
 - Irony – the better the training, by giving more examples, the harder the cases can be to defend
- The fact that firms are dealing with customers in real time, juggling various regulatory priorities, is often lost on panels
- When the telescope of experience is turned around – the scams appear easy to detect, because they *actually happened*
- Note that temporary holds are permissible *only* if there is a reasonable and actual suspicion of exploitation.

Strategies to Minimize Weaponization of Training and Procedures

- Emphasize *reasonableness* (which is baked into all of the regulatory guidance)
- Note that when victims are coached by the scammers to give innocent answers, detection may elude the firm because customers are willingly cooperating with the scammers
- Reference in the training the various other regulatory duties firms have to their customers (best execution, timely execution, privacy, access to their own funds, etc.) and that all of these must be balanced
- Avoid language like “ensuring customers’ safety” or “regulatory duty to protect customers” from becoming victims (Because there are no such regulatory duties!)

Strategies When a Customer Reports Possible Scam

- Consider recording the call
- Train the staff to ask open ended questions and not interrupt the answers
- Do not promise any results

Other Protective Measures

- Regular customer educational pieces – linking to SEC, FINRA, NASAA and other sites that detail trends in financial scams
- Trusted contact
- Slow down
- Pop ups/messages before withdrawals
- Scam warning conversations
- Review firm guarantees – Plain English
- File IC3 reports (and APS, if applicable) – even when not required

Regulatory Duties

- Claimants often presents all statements by regulatory bodies as if firms are compelled to abide by them. That misrepresents the authority.
 - Many create immunities for firms.
 - Other releases offer a range a practices firms may choose to adopt but are not required to.
 - Some impose requirements for firms to follow.

| Date | Source | Title | Guidance, duties and immunities applicable to FIRM (emphases added) |
|----------------|-----------------|--|---|
| September 2007 | FINRA NTM 07-43 | FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers | <ul style="list-style-type: none"> “FINRA does not have special rules for senior customers” but <u>recommendations</u> of securities should consider age and time horizon. “<u>Firms do not have an obligation to shield their customers from risks that customers want to take</u>, but they are required to fully understand the products recommended by their registered representatives, to give their customers a fair and balanced picture of the risks, costs and benefits associated with the products or transactions they recommend and recommend only those products that are suitable in light of the customer’s financial goals and needs. <p><u>This does not mean that all seniors are, or should be, risk-averse, or that any particular product, per se, is unsuitable for older investors.”</u></p> <ul style="list-style-type: none"> Firms should not permit sales personnel to use professional designations such as “senior specialist” if it implies expertise that is <u>not legitimate</u>. |

| Date | Source | Title | Guidance, duties and immunities applicable to FIRM (emphases added) |
|------------------|---|---|--|
| February 5, 2018 | FINRA Rule 4512(a)(1)(F) and Supplementary Material .06; RN 17-11 FAQ | Trusted contact information SEC Approves Rules Relating to Financial Exploitation of Seniors Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Seniors | <ul style="list-style-type: none"> “The amendments to Rule 4512 require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person . . . when updating account information for a non-institutional account in existence prior to the effective date of the amendments (existing account). The amendments do not prohibit members from opening and maintaining an account if a customer fails to identify a trusted contact person as long as the member makes reasonable efforts to obtain the information. <u>Asking a customer to provide the name and contact information for a trusted contact person ordinarily would constitute reasonable efforts to obtain the information and would satisfy the rule's requirements.</u>” Q.3.3. Does Rule 4512 require that a customer provide the trusted-contact information? No . . . Asking a customer to provide the name and contact information for a trusted contact (e.g., in an account opening form) constitutes reasonable efforts to obtain the information and satisfies the Rule 4512 requirements. |

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|-----------------|---|---|--|
| May 24, 2018 | 12 U.S.C. § 3423 SEC, FINRA and NASAA Joint Fact Sheet (May 23, 2019) | Senior Safe Act Senior Safe Act Fact Sheet | <ul style="list-style-type: none"> • Congress did not impose any requirements on firms but provided immunity from liability in any civil or administrative proceeding for reporting potential exploitation of seniors if the firms conduct sufficient training • “The Senior Safe Act does not mandate that any employees be trained.” |

| Date | Source | Title | Guidance, duties and immunities applicable to FIRM (emphases added) |
|------------------|--------------------------|--|---|
| November 1, 2016 | SEC Release No. 34-79215 | <i>Notice of Filing of a Proposed Rule Change to Amend Rule 4512 (Customer Account Information) and Adopt FINRA Rule 2165 (Financial Exploitation of Specified Adults)</i> | <ul style="list-style-type: none"> • In considering whether to permit FINRA to adopt Rule 2165, which permits but does not require firms to hold a disbursement, the SEC noted that “Currently, however, <u>FINRA rules do not explicitly permit members to contact a <u>nonaccount holder</u> or to place a <u>temporary hold on disbursements of funds or securities where there is a reasonable belief of financial exploitation</u> of a senior or other vulnerable adult.”</u> • “The proposed rule change would permit a member that reasonably believes that financial exploitation may be occurring to place a temporary hold on the disbursement of funds or securities from the account of a “specified adult” customer. <u>The proposed rule change creates no obligation to withhold a disbursement of funds or securities where financial exploitation may be <u>occurring.</u>”</u> |

| Date | Source | Title | Guidance, duties and immunities applicable to FIRM (emphases added) |
|--------------|----------------------------------|--|--|
| July 1, 2020 | Section 517.34, Florida Statutes | <i>Protection of specified adults.</i> | <p>“[T]he Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. . . . The Legislature intends to encourage the constructive involvement of securities dealers, investment advisers, and associated <u>persons</u> who <u>take action</u> based upon the reasonable belief that specified adults with investment accounts have been or are the subject of financial exploitation, and <u>to provide</u> securities dealers, investment advisers, and associated persons immunity from liability for taking actions as authorized herein. The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and exercise their constitutional rights consistent with due process with the need to provide securities dealers, investment advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults’ risk of loss due to abuse, neglect, or financial exploitation. . . .</p> <p>(8) Absent a reasonable belief of financial exploitation as provided in this section, this section does not alter a dealer’s, an investment adviser’s, or an associated person’s obligation to comply with instructions from a client to buy or sell securities, disburse funds or transfer securities from an account, close an <u>account</u>, or transfer an account to another dealer, investment adviser, or associated person.</p> <p>(9) This section does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable <u>law</u>. This section does not limit the right of a dealer, an investment adviser, or an associated person to otherwise refuse or place a delay on a disbursement or transaction under other <u>applicable law or under an applicable customer agreement</u></p> |

“[T]he Legislature recognizes the freedom of specified adults to manage their assets, make investment choices, and spend their funds, and intends that such rights may not be infringed absent a reasonable belief of financial exploitation as provided in this section. . . .

The Legislature intends to balance the rights of specified adults to direct and control their assets, funds, and investments and exercise their constitutional rights consistent with due process with the need to provide securities dealers, investment advisers, and associated persons the ability to place narrow, time-limited restrictions on these rights in an effort to decrease specified adults’ risk of loss due to abuse, neglect, or financial exploitation. . . .

(8) Absent a reasonable belief of financial exploitation as provided in this section, **this section does not alter a dealer's, an investment adviser's, or an associated person's obligation to comply with instructions from a client** to buy or sell securities, disburse funds or transfer securities from an account, close an account, or transfer an account to another dealer, investment adviser, or associated person.

(9) **This section does not create new rights for or impose new obligations on a dealer, an investment adviser, or an associated person under other applicable law.** This section does not limit the right of a dealer, an investment adviser, or an associated person to otherwise refuse or place a delay on a disbursement or transaction under other applicable law or under an applicable customer agreement.