GOVERNMENT RELATIONS POLICY POSITION PAPER

Protecting Senior Investors from Financial Exploitation

The Issue

The population of senior investors in the United States is rapidly increasing as Americans grow older and maintain investments into their retirement. However, senior investors are often a target of financial fraud or exploitation because of diminished capacity, isolation, disability, health problems or bereavement. In fact, reports indicate that 1 in 5 Americans age 65 or older have been victimized by financial fraud or have been the target of swindling. Financial advisors and firms work closely with senior investors and their investments, and therefore may observe signs of possible fraud, exploitation, and abuse. Because of these relationships, protecting senior investors continues to be a top priority for LPL.

Current Status

Congress

The Senior $afe Act of 2017 was signed into law on May 24, 2018. Based upon the Maine Senior $afe program, the *Senior $afe Act* requires financial firms to train employees to detect and report exploitation of senior investors while providing immunity to those disclosing the possible exploitation of a senior investor to a covered agency, if they have received training. Implementation of the *Senior $safe Act* began shortly after it became federal law and is currently underway.

Under the *Senior $afe Act*, the Consumer Finance and Protection Bureau (CFPB) was tasked with implementing a $75 million Senior Investor Protection Grant Program. This program would provide Adult Protective Services (APS) in each state with critical funding to expand capacity and fully investigate each claim. The CFPB has not been able to administer the grants program because of funding issues. However, the *Empowering States to Protect Seniors from Bad Actors Act,* which was introduced in the House and Senate during the 117th Congress, would fund the grant program. The *Empowering States to Protect Seniors from Bad Actors Act* passed the House in May 2022 and is waiting to be voted on in the Senate. LPL joined the North American Securities Administrators Association (NASAA) to express our support for this bill.

In 2021, the House passed H.R. 1565, *the Senior Security Act of 2021,* with bipartisan support. The bill would establish a Senior Investor Taskforce at the Securities and Exchange Commission, which is an important step towards increasing protections for the elderly. The bill's mandate to complete a report and study on financial exploitations of senior citizens will provide needed insight into the breadth and scope of the issue. This will ultimately result in increased knowledge and tools to continue fighting to protect our most vulnerable population. A bipartisan companion bill has also been introduced in the U.S. Senate.

LPL also has expressed support for H.R. 2265, *the Financial Exploitation Prevention Act of 2021,* which also passed the House in 2021 and has been referred to the Senate Committee on Banking, Housing and Urban Affairs. The bill would help enhance protections for older and potentially more vulnerable investors by enabling LPL to hold a transaction or payment of a disbursement if it is believed such a request for redeeming the security is being conducted to exploit the client. The bill also authorizes state regulators, courts, or administrative agencies to delay payment further. Delaying the payment of a security or fund's redemption provides financial firms and the appropriate agencies with time to thoroughly investigate suspected exploitation.

NASAA and the states

In February 2016, NASAA adopted a model act entitled *An Act to Protect Vulnerable Adults from Financial Exploitation* for states to adopt, which protects senior investors and vulnerable adults from financial exploitation. The model act mandates reporting to the state securities regulator and adult protective services when a representative reasonably believes financial exploitation may have occurred. Following an initial report to regulators, the model act authorizes the following:

- Notification of a third party previously designated by the investor, also known as a trusted contact;
- Temporary holds of up to 15 days on disbursements of funds; and
- Immunity from civil or administrative liability for the reporter.

Agencies must investigate the suspected financial abuse and provide a report within seven days of the start of the hold of disbursements.

Following the adoption of the model act by NASAA, each state must file legislation or regulation to make it a law in their state. Many states had enacted laws that required broker/dealers and investment advisers to report senior investor exploitation before the publication of the model act. These states have taken steps to align with the model act through the legislative or rulemaking process. As of February 2022, 32 states have enacted variations of the Model.

In March 2016, NASAA announced the launch of SeniorS$afe, a program to help state regulators train financial services professionals in identifying and reporting suspected senior financial abuse. The program, created by the Maine Council for Elder Abuse Prevention, includes a presentation highlighting behavioral and account-management changes that may indicate a senior client's cognitive decline and financial abuse. The other part of the training focuses on reporting incidences within a firm and to outside authorities. Since the launch of this program, LPL has been involved in several partnerships with key states to offer this training to our financial advisors.

Most recently, LPL worked with South Carolina Attorney General Alan Wilson, his senior staff, and state legislators to enact legislation based on the NASAA Model Rule. The new law contains key changes from the NASAA Model championed by LPL and will result in stronger protections for seniors and vulnerable adults in South Carolina.

FINRA

In early 2022, FINRA announced the adoption of updates to Rule 2165, which addresses the financial exploitation of seniors. The new amendments include significant priorities of LPL's, such as the ability to place holds on transactions and the ability to continue holds on disbursements or transactions for up to 55 days to allow for a thorough investigation by state authorities. LPL submitted a comment letter to FINRA when the changes were first proposed. It can be viewed here.

We remain concerned about the possibility of a divergence between state and federal rules, particularly if a state has adopted the NASAA Model Rule without changes. To date, 22 states have recognized the importance of including holds on transactions, but until NASAA updates their Model Rule there will be a lack of uniformity that could have a chilling effect on firms utilizing the ability to place holds.

FINRA has also collaborated with NASAA and the SEC to remind investors of the importance of adding a trusted contact to their account. This is one of the most important tools that firms can use when alerted to suspected fraud. Trusted contacts are not permitted to make changes to accounts, conduct transactions, or have power of attorney; rather they are someone trusted by the investor who can be contacted in the event of fraud, health concerns, or natural disasters. To encourage advisors and investors to add a trusted contact to existing accounts, LPL is utilizing materials issued by FINRA, NASAA and the SEC in an educational campaign.

LPL Position

Protecting senior investors from financial exploitation is a shared interest of legislators, regulators and the financial services industry. LPL strongly supports requirements and guidance that enhance the protection of senior investors and vulnerable adults and provide firms with tools that may help firms protect these investors. Such tools include:

- Temporary holds on suspicious transactions to allow time for an investigation;
- Permission to contact a designated person trusted by the investor or a family member when concerns arise;
- Support for reporting to authorities of suspected abuse or exploitation, and immunity for such actions, and
- Ability to place holds on transactions and disbursements, so that a client's market positions are maintained and potential damage is minimized.

This material was prepared by LPL Financial.

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