

Government Relations

Senior Investor Protection

The Issue

The population of senior investors in the United States is increasing rapidly. Unfortunately, reports indicate that one in five Americans age 65 or older has been victimized by financial fraud. Senior investors may be especially at risk for financial fraud or exploitation because of diminished capacity, isolation, disability, health problems, and bereavement. Financial advisors and firms work closely with senior investors and their investments, and therefore may observe signs of potential fraud, exploitation, and abuse. Protecting senior investors is a top priority for LPL.

Current Status

NASAA and the States:

In February 2016, the North American Securities Administrators Association (NASAA) adopted a Model Act for states to use to protect senior investors and vulnerable adults from financial exploitation. The Model mandates reporting to the state securities regulator and adult protective services (the Agencies) when a representative reasonably believes financial exploitation may have occurred. In such situations, the Model authorizes notification of a third party previously designated by the investor and temporary holds on disbursements of funds. Firms placing a hold have to notify the Agencies and all persons authorized to transact business on the account (excluding the suspected exploiter) within two business days. A further report to the Agencies is required seven days after initiation of the hold. The hold is permitted for 15 business days, then another 10 business days if the Agencies so request. The Model provides immunity from civil or administrative liability for actions taken pursuant to it. Many states had enacted laws that required broker-dealers and investment advisers to report senior financial exploitation before publication of the Model, and others have since moved forward with legislation and rulemaking similar to the model.

In March 2016, NASAA announced the launch of SeniorSafe, a program to help state regulators train broker-dealers and investment advisers in identifying and reporting suspected elder 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.

FINRA:

In February 2017, the SEC approved FINRA's rule addressing financial exploitation of seniors. The new requirements went into effect on February 5, 2018.

The changes approved by the SEC involve two key steps to protect investors. First, firms are required to make reasonable efforts to obtain the name and contact information for a trusted contact person for a customer's account. Second, firms are permitted to place a temporary hold on a disbursement of funds or securities when there is reasonable belief of financial exploitation.

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Congress:

Senator Susan Collins (R-ME) and Senator Claire McCaskill (D-MO) introduced the *Senior \$afe Act of 2015*, which would require firms to train employees to detect and report exploitation of senior investors. The bill would also provide immunity to those disclosing the possible exploitation of a senior investor to a covered agency if they have received training, and is based upon the Maine Senior\$afe program, which provides training on the identification and reporting of financial exploitation. Representatives Bruce Poliquin (R-ME) and Kyrsten Sinema (D-AZ) introduced a companion bill in the U.S. House of Representatives, which passed the House by voice vote on July 5, 2016; however, the legislation failed to pass the Senate. On January 24, 2017, Senators Collins and McCaskill re-introduced this bill as the Senior \$afe Act of 2017 (S. 223), and the House companion (H.R. 3758) bill was reintroduced on September 13, 2017. While H.R. 3758 passed the House Financial Services Committee (60-0) in October, S. 223 has failed to move independently.

Despite little individual movement, the *Senior \$afe Act of 2017* is included in the Senate Banking Committee's *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155). S. 2155, which is sponsored by Committee Chair Crapo (R-ID) and has bipartisan support, is aimed at providing regulatory relief to credit unions and community banks. The bill is expected to be voted on by the Committee in early March, and it will likely garner the necessary 60 votes to pass the full Senate.

Furthermore, the Senior \$afe Act of 2017 is also included in H.R. 225 – the *Housing Opportunities Made Easier (HOME) Act*. The HOME Act, sponsored by Representatives Trott (R-MI) and Sinema, would clarify that nonprofit organizations are able to accept donated mortgage appraisals, and the bill passed the full House by voice vote in late January, 2018. The HOME Act has been sent to the Senate Banking Committee, with no further action yet scheduled.

LPL Position

This topic has received significant interest from regulators and legislators, particularly in the past few years. LPL strongly supports requirements and guidance that enhance the protection of senior investors and provide firms with tools that may help firms protect these investors. Such tools include temporary holds on suspicious transactions to allow time for investigation, permission to contact a 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. LPL will continue to support thoughtful regulation and legislation on this issue at both the state and federal levels.

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