

## Agenda

**CEFLI Compliance & Ethics Committee Meeting**  
**Wednesday, September 25, 2019**  
**2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT**  
**Dial In: (800) 239-9838**  
**Passcode: 3646069**

- I. **Welcome and Introduction.** **Donald J. Walters**
  - A. Antitrust Statement.
- II. **Approval of Minutes – August 21, 2019 Meeting.** **The Committee**
- III. **Issues for Review.** **The Committee**
  - A. Role of Compliance in Innovation Ventures.

Life insurance companies are continually reviewing opportunities to participate in new innovations being introduced to enhance the customer experience. In some cases, life insurance companies have established separate venture capital organizations to make investments in innovation startups.

However, there may be circumstances where a life insurance company may not take a controlling interest in innovation startups and, accordingly, compliance may not be asked to participate in the analysis of a new innovation opportunity.

As innovations are introduced into our industry, compliance and ethics professionals may be asked to participate in the due diligence process to analyze potential risks presented by a new innovation strategy.

***The Committee will be asked to discuss the extent to which compliance has been asked to be involved in the analysis of new innovation opportunities at life insurance companies. If so, when does compliance become involved? Moreover, the Committee also will be asked to discuss whether the role of compliance may change in the event the life insurance company does not have a controlling interest in the innovation startup. Also, the Committee will be asked to discuss any regulatory expectations with respect to the role of compliance in the evaluation of innovation opportunities.***

B. Senior Financial Exploitation Issues.

Demographic trends suggest the issues associated with possible financial exploitation of seniors will be prevalent in our economy for years to come.

To address these concerns, several life insurance companies have developed designated teams who are responsible for resolving issues that may suggest instances of senior financial exploitation.

FINRA has placed emphasis upon establishing procedures to assist firms with identifying potential instances of financial exploitation of seniors. (See, discussion of FINRA Regulatory Notice 19-27 later in the agenda.) For example, Rule 2165 permits a member firm to place a temporary hold on disbursement of funds or securities from the accounts of a “specified adult” customer when the firm reasonably believes that financial exploitation of that adult has occurred or may be occurring or has been attempted or will be attempted.

Also, FINRA Rule 4512 requires firms to make reasonable efforts to obtain the name and contact information of a “trusted contact” to protect customer assets and to respond to possible instances of financial exploitation of a senior.

New York Regulation 187 also requires insurers to establish and maintain procedures designed to prevent financial exploitation and abuse.

***The Committee will be asked to discuss how their companies address issues associated with suspected instances of financial exploitation of seniors. Specifically, the Committee will be asked to discuss whether their company has established a separate team or department to address these issues. Also, the Committee will be asked to discuss their experiences, as applicable, in working with a “trusted contact” identified through the new account opening or updating process. Lastly, the Committee will be asked to discuss whether any state insurance regulators have raised questions during market regulation activities concerning how companies address suspected instances of financial exploitation of seniors.***

C. Possible Interest in Establishing a “Fraud Alert” Group.

A suggestion has been offered to consider whether there may be interest in establishing an email distribution list that could serve as a “Fraud Alert” group for CEFLI member companies.

It is been suggested that this group could be comprised of representatives of each company’s SIU or Antifraud Department and could meet on an ad hoc or timely basis to alert companies to new fraudulent techniques perpetrated against life insurance companies.

***The Committee will be asked to discuss whether there may be interest in establishing a “Fraud Alert” group among CEFLI member companies.***

D. Regulation Best Interest.

Many life insurance companies will be impacted by the requirements of the SEC’s recently issued Regulation Best Interest.

Over the next several months, the Committee will review various questions associated with Regulation Best Interest and will explore various compliance strategies. (See, related Regulation Best Interest issues under Reporting Items later in the agenda.)

Accordingly, a question has been presented regarding Regulation Best Interest as follows:

*Have any companies that distribute variable products taken the position that they will not be subject to Regulation Best Interest because they provide education only to a customer and do not offer recommendations?*

***The Committee will be asked to discuss whether their company has determined that Regulation Best Interest will not apply to their variable product distribution practices because they provide education only to a customer and do not offer recommendations.***

E. NYDFS Regulation 500 - Cybersecurity Examinations.

It has come to our attention that the New York Department of Financial Services (“NYDFS”) has been undertaking a review of company’s cybersecurity controls designed to comply with the requirements of NYDFS Regulation 500 as part of their examination process.

***The Committee will be asked to discuss whether their companies have been subject to a review of their cybersecurity controls related to NYDFS Regulation 500 as part of an examination conducted by the NYDFS.***

F. Role of Compliance in Evaluating “New” Sales Strategies.

Life insurance producers are always developing new and innovative ways to encourage sales of life insurance policies. Over the past several years, several programs have been introduced such as the LEAP (Life Economic Acceleration Process) system which has been described as a software system to encourage customers to purchase whole life insurance policies.

While these types of “new” and “innovative” programs were popular a few years ago, representatives of compliance departments recently indicated that they are now being asked to evaluate similar types of systems recommended by their company’s Sales and Marketing Departments.

These developments raise questions concerning the appropriate role of compliance in evaluating “new” sales systems.

***The Committee will be asked to discuss the role that the compliance and ethics staff at their company plays in evaluating “new” sales techniques designed to encourage purchases whole life or other types of life insurance products.***

#### IV. Reporting Items.

CEFLI Staff.

##### A. NAIC Annuity Suitability Working Group.

The NAIC Annuity Suitability Working Group continues to pursue an aggressive agenda with respect to attempting to develop a final draft of proposed revisions to the NAIC Suitability in Annuity Transactions Model Regulation by the NAIC Fall National Meeting in early December in Austin, Texas.

The Working Group has been holding conference calls over the past several weeks in an effort to achieve this goal.

CEFLI Staff will provide a brief report concerning the Working Group’s efforts.

##### B. Comment Deadline: October 1 - FINRA Regulatory Notice 19-27.

FINRA periodically conducts a retrospective review of its Rules to assess their effectiveness and efficiency as a means to consider possible updates or modifications to existing FINRA Rules.

FINRA recently issued Regulatory Notice 19-27 which is seeking comment on FINRA’s retrospective review of its rules pertaining to helping protect seniors from possible financial exploitation. (See copy of FINRA Regulatory Notice 19-27.)

The deadline to submit comments pertaining to Regulatory Notice 19-27 is October 8.

C. Regulation Best Interest Lawsuit.

Seven states and the District of Columbia have filed suit against the SEC challenging the legality of the issuance of Regulation Best Interest.

The lawsuit seeks to vacate Regulation Best Interest for three reasons:

- The SEC exceeded statutory authority to issue Regulation Best Interest;
- Regulation Best Interest does not apply the same standard as required for investment advisers as required under the Dodd Frank Act; and
- The rulemaking was arbitrary and capricious.

Also, member companies should be aware of the Regulation Best Interest blog that has been developed by CEFLI Affiliate Member law firm Drinker Biddle which will provide updated information concerning developments pertaining to Regulation Best Interest over the months ahead.

The Drinker Biddle Regulation Best Interest blog can be found through the following link:

<http://www.brokerdealerlawblog.com/>

D. New DOL Fiduciary Rule Expected in Two Months.

Several recent media reports indicate that the DOL will be issuing a revised Fiduciary Rule within the next two months.

It is anticipated that the new DOL Fiduciary Rule will be aligned with the SEC's Regulation Best Interest.

There will be a public comment period before the rule becomes final.

**V. CEFLI Activities.**

A. 2019 CEFLI Summit Meeting - The Future of Sales Standards in the Life Insurance Industry - November 20-21, 2019 - Washington, DC.

Registration is now open for the 2019 CEFLI Summit Meeting to explore The Future of Sales Standards in the Life Insurance Industry at the Fairmont Hotel in Washington, DC on November 20-21.

All CEFLI member company representatives may attend the Summit Meeting without any registration fee as part of your company's CEFLI membership benefits.

We hope you will be able to join us!

B. Antifraud Issue Forum - Wednesday, October 9 - 2 PM EDT.

The next meeting of CEFLI's Antifraud Issue Forum is scheduled to take place on Wednesday, October 9 at 2 PM EDT.

Members of the Issue Forum are asked to submit any discussion items for the Issue Forum agenda to Kelly Ireland by close of business on Friday, October 4.

Also, anyone who would like to be added to the distribution list for the Antifraud Issue Forum should contact Kelly Ireland to express their interest.

C. 2019 CEFLI Annual Conference and Compliance Leadership Forum.

CEFLI conducted its 2019 Annual Conference and Compliance Leadership Forum in Nashville, Tennessee on September 11-13.

CEFLI staff will provide a brief overview of the highlights of the 2019 CEFLI Annual Conference and Compliance Leadership Forum.

**VI. Next Meeting.**

The next meeting of the Committee is scheduled to take place:

October 16, 2019 - 2 PM EDT/1 PM CDT/12 Noon MDT/11 AM PDT

The Committee will hold its remaining 2019 meetings as follows:

November 13, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

December 18, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

Please mark your calendar and plan to join us!

**VII. Other Business.**

***The Committee will be asked to identify and discuss any other business to be brought before the Committee.***

**DRAFT**

**Minutes  
Meeting of the  
CEFLI Compliance & Ethics Committee  
August 21, 2019  
2 PM EDT/1 PM CDT/11 AM PDT**

A meeting of the CEFLI Compliance & Ethics Committee (the "Committee") was held via conference call on Wednesday, August 21, 2019 at 2 PM EDT/1 PM CDT/11 AM PDT.

The following CEFLI member company representatives participated in the meeting:

Marcie Allen	Texas Life Insurance Company
Renee Ambrosy	CNO Financial
Shannon Aussieker	Country Life Insurance
Jenna Austin	Guggenheim Life
Erich Axmacher	Securian Financial
Brendan Bakala	Catholic Order of Foresters
Lauren Barbaruolo	Oxford Life Insurance
Chad Batterson	Athene USA
John Baumgardner	Standard Insurance Company
Ann Binzer	Cincinnati Life
Katelynn Blalock	Western & Southern
Nicole Blakney	State Farm Life
Vickie Bulger	Primerica
Laura Bullard	Foresters
Andrea Christensen	Sagicor Life
Dana Cook	Assurity Life Insurance
Steve Corbly	Cincinnati Life
Jacquie Crader	CUNA Mutual Group
John Cunningham	Fidelity Investments Life
Tony Dowling	Jackson National
Bruce Eschbach	Texas Life
Toba Fryer	John Hancock
Paula Gentry	Cincinnati Life
Cheryl Gobbi	Cincinnati Life
Rachel Gomez	State Farm Life
Leslie Green	Western & Southern
Steve Harris	Lincoln Financial

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Dennis Herchel	SBLI MA
John Hite	Securian Financial
Lisa Holland	State Farm Life
Belinda Howard	Principal Life
Nathan Huss	Sammons
Natalie Jones	Guggenheim Life
Martin Karp	Oxford Life
De Keimach	Delaware Life
Chris Kirby	Forresters Life Insurance
Samantha Knackmuhs	State Farm Life
Nate Kolle	Securian Financial
Michele Kulish Danielson	American Enterprise
Lisa Kramer	Voya Financial
Mark Lasswell	Ameriprise
Brian Leary	Fidelity Investments
Kristie Lee	Kristie Lee
Laurie Lewis	Amica Life Insurance
Liza Perry	USAA Life
Tony Poole	AAA Life
Kristin May	American Fidelity
Dave Milligan	American Equity
Morgan Milner	Modern Woodmen
Amy Mulligan-Capocci	John Hancock
Deb Naegele	Cincinnati Life
Sabrina Olender	Foresters Financial
Megan Phillips	Principal Life
Luke Ptaszynski	National Guardian Life
Daniel Reinecke	Gerber Life
Heather Russo	Illinois Mutual
Sally Roudebush	Lincoln Heritage Life Insurance
Alison Soderberg	Lombard International
Devin Smith	Securian Financial
Kelly Stokes	Principal Life
Carla Strauch	Thrivent
Jill Terry	Cincinnati Life
Brandon Trudell	Voya Financial
Chris Vellante	Delaware Life
Michelle Ward	Erie Family Life
Jaime Waters	EquiTrust
Larry Welch	Citizens, Inc.
Jennifer Wheeler	American Fidelity
Stacey White	American National

Nancy Perez and Donald Walters of CEFLI also participated in the meeting.

**I. Welcome and Introduction.**

The meeting began with a recitation of CEFLI's anti-trust statement.

**II. Approval of Minutes – July 31, 2019 Meetings.**

On motion, duly made and seconded and unanimously carried, the Committee: RESOLVED, that, the Minutes of the July 31, 2019 meeting are hereby approved.

**III. Issues for Review.**

**A. Personal Authentication Procedures.**

The Committee was asked to discuss their strategies to verify the authenticity of individuals submitting service requests concerning life insurance policies and annuity contracts.

A Committee member reported that they use Instant ID by LEXIS NEXIS, which asks callers three questions in order to verify the authenticity of customer. This service has helped identify several calls which appeared to be account takeover attempts.

Another Committee member indicated their practice requires callers to provide four pieces of information – name, address, date of birth and the last four digits of the owners Social Security Number. Policyholders are given the opportunity to add a password to their account as well. In situations where the caller has the required information but is not the individual on file (e.g. if a former spouse can answer the questions), a written authorization from the policyholder is required before information would be shared.

Other practices for verifying callers include requiring the Policy or Contract number, requiring written requests for certain services, comparing signatures on file, using Pindrop to record calls, and using GIACT's verification services for requests over a certain monetary threshold or if new bank account information is given.

**B. California Consumer Privacy Act - Timing of Compliance Strategies.**

The Committee was asked to discuss the timing of their compliance strategies to meet the requirements of the California Consumer Privacy Act.

A Committee member indicated that, while they are in the early stages, they have established a project plan, committed resources and have begun developing the required disclosures.

Other Committee members indicated that they have also started looking into their compliance strategy and are considering what data they have that may be in scope and what tools are available to assist with implementation.

C. Texas Data Match Compliance.

The Committee was asked to discuss strategies to comply with the requirements of Texas Data Match reporting obligations (Texas Administrative Code Section 55.553) by financial institutions to identify accounts owned by delinquent child support obligors.

Several Committee members reported they are checking the National Child Support Lien Network (CSLN) for delinquent obligors before releasing any payments. Texas participates with this program and Massachusetts is also very active.

Another source that Committee members are checking is the Federal Office of Child Support Enforcement (OCSE) insurance match data base which compares information about parents who owe past-due support with information maintained by participating insurers.

A Committee member reported that there are still gaps and challenges because a number of states do not participate or require withholding of payments and there are variances in how “account” is defined and it is not always clear whether an insurance policy or contract would trigger the obligation to report (though a number of states are working to tighten up the definition).

D. Household Assets - Variable Product Suitability.

FINRA Rule 2111 (Suitability) requires firms and associated persons to have a reasonable belief that a recommendation is suitable based upon reasonable efforts to ascertain the customer’s investment profile.

The Committee was asked to discuss whether they request customers to report their “household assets” as part of suitability information used to offer a recommendation concerning the purchase of a variable product offered through a life insurance company.

Several Committee members indicated that they do ask for household assets, though some only do so for fixed annuities.

A Committee member reported that they have heard from their distribution partners that they may be unique in that they only ask about individual assets, not household assets, for their variable annuity business.

E. California - Notification of Pending Lapse - Life Insurance Policies.

The Committee was asked to discuss their company's compliance strategies with respect to providing policy owners with lapse notifications consistent with the requirements of California Insurance Code §10113.72(c); even for policies issued before January 1, 2013 that have been "renewed" through premium payments.

The discussion centered around the case of *Bentley v. United of Omaha Life Ins. Co.* decided in the United States District Court for the Central District of California in which the court found that payment of a premium after January 1, 2013 amounted to renewal of the policy on or after the effective date of §10113.72(c), thereby triggering the lapse notification requirements even though the policy was issued prior to January 1, 2013.

A Committee member raised the issue that the District Court's decision in the above case renders any policy for which premium is paid after January 1, 2013 to be subject to the lapse notice requirements, regardless of the date of issuance. The "fix" for this issue has been to remove the January 1, 2013 system "switch" for issuing lapse notices so that all CA policyholders receive the same 60-day lapse notice.

Other Committee members reported that they are looking into this issue and considering system changes that would address "renewals by premium payment" after January 1, 2013.

F. Verification of Annuity Training Requirements.

The NAIC Suitability in Annuity Transactions Model Regulation requires producers to complete a four-hour continuing education training course approved by the Department of Insurance before soliciting the purchase of annuity products.

The Committee was asked to discuss their practices to confirm that producers have completed continuing education training requirements.

Several Committee members indicated that they require producers to submit verification upon completion of training courses, which is then compared to specific state training requirements before it is approved.

Other Committee members reported that they rely on external verification through daily feeds from training providers such as RegEd and SIRCON.

If an application is received and the insurer has not verified completion of training, the producer is usually required to re-take the application once the course has been completed.

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Some Committee members expressed concern that the NAIC may change the Suitability Model Regulation producer training requirements, which could cause a compliance burden in terms of what an insurer must do to verify that training requirements are met.

F. Beneficiary Information.

The Committee was asked to discuss any unique practices their companies may have employed to obtain information concerning beneficiaries of life insurance policies and annuity contracts and, if a supplemental form was used for this purpose, was it filed.

While some Committee members indicated that they initially used a supplemental form for collecting beneficiary information, many have subsequently revised their application to incorporate the collection of beneficiary information. Supplemental forms are still used for collecting post-issue beneficiary information.

With respect to the kind of information collected, Committee members reported that they commonly ask for full name, relationship to insured, address and Social Security Number, though name and relationship are the only required elements.

A Committee member reported that they request a W9 form from the beneficiary for annuity death benefit claims.

G. Customer/Producer Signature Requirements on Disclosure Forms.

1. New York - Regulation 60.

The Committee was asked to discuss their practices with respect to obtaining signatures to confirm compliance with the Disclosure Statement requirement under New York Regulation 60.

A Committee member indicated their practice is to require only the producer to sign the disclosure form pursuant to their Reg 60 procedure filed with the NYDFS. Discretion is permitted with respect to requiring the customer to sign the form, though a copy of the form is sent to the customer prior to contract delivery.

Another Committee member reported a similar process to the one above, adding that when information is received from the insurer whose product is being replaced, the producer is required to sign off on the form.

Another Committee member indicated that they require both the producer and customer to sign the Reg 60 disclosure form

2. California - Notice Regarding Standards for Medi-Cal Eligibility.

The Committee was asked to discuss their company's practices with respect to requiring signatures on Notices of Medi-Cal eligibility as required under California law.

A Committee member indicated that it is their practice to require signatures from both the producer and the customer.

#### **IV. Reporting Items.**

##### **A. NAIC Annuity Suitability Working Group.**

CEFLI Staff reported that the NAIC Annuity Suitability Working Group met in person at the NAIC Summer National Meeting in New York City on Saturday, August 3.

The Working Group plans to develop a final draft for approval by the NAIC at its fall National Meeting in Austin, Texas on December 7-10.

CEFLI will monitor these developments and provide updated information, as appropriate.

##### **B. New Hampshire Law to Protect Elderly Investors.**

CEFLI staff reported that New Hampshire recently passed a law, similar to those enacted in other states, that will allow registered representatives and investment advisers to delay disbursement of funds from an investment account for a limited period of time if they reasonably believe it could result in the financial exploitation of a vulnerable adult. The new law becomes effective September 8.

If an investment firm or its representative delays the disbursement of client funds due to a reasonable suspicion of financial exploitation, the firm or individual must follow certain procedures. This includes notifying the Bureau, notifying affected parties (except for parties believed to have engaged in the exploitation), and reviewing the proposed disbursement.

##### **C. FINRA Launches Regulation Best Interest Webpage.**

CEFLI staff reported that FINRA recently issued Regulatory Notice 19-26 which announced the launch of a Regulation Best Interest webpage that will allow broker-dealers to comply with the new regulation.

FINRA stated that it will issue written and online content to assist broker-dealers to assist firms in their implementation efforts.

The FINRA webpage indicates that FINRA will be reviewing its rules to determine whether they align with the SEC's rulemaking as FINRA will examine and enforce Regulation Best Interest.

D. Labor Department Nominee Eugene Scalia Will Most Likely Have to Recuse Himself from Investment Advice Rulemaking.

CEFLI staff reported that President Trump's nominee to serve as Secretary of the US Department of Labor, Eugene Scalia, will most likely have to recuse himself from any investment advice rulemaking, such as the DOL Fiduciary Rule, given that he handled various challenges to the DOL Fiduciary Rule while in private practice.

Government ethics rules generally prevent officials from participating in issues they were involved in while in the private sector to guard against potential conflicts of interest.

E. FINRA to Expand Examination Cycle for Small Broker Dealers.

CEFLI staff reported that in an interview with a FINRA Board Member, it was reported that FINRA will expand its examination cycle from two years to four years for small broker dealers with a "clean" disciplinary history.

**V. CEFLI Activities.**

A. 2019 CEFLI Annual Conference and Compliance Leadership Forum - Nashville, Tennessee - September 11-13.

Registration is now open for the 2019 CEFLI Annual Conference and Compliance Leadership Forum which will be taking place at the JW Marriott Hotel in Nashville, Tennessee on September 11-13.

More information concerning the 2019 CEFLI Annual Conference and Compliance Leadership Forum can be found via CEFLI's website.

**VI. Next Meeting.**

The Committee will hold its next meeting on September 25, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT.

The Committee will hold further 2019 meetings as follows:

October 16, 2019 - 2 PM EDT/1 PM CDT/12 Noon MST/11 AM PDT  
November 13, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST  
December 18, 2019 - 2 PM EST/1 PM CST/12 Noon MST/11 AM PST

**VII. Other Business.**

There being no additional business the meeting was adjourned.

Regulatory Notice 19-27

# FINRA Requests Comment on Rules and Issues Relating to Senior Investors

Comment Period Expires: October 8, 2019

## Summary

FINRA is conducting a retrospective review to assess the effectiveness and efficiency of its rules and administrative processes that help protect senior investors from financial exploitation. The protection of senior investors is a top priority for FINRA. As such, FINRA is interested in whether additional tools, guidance or changes to FINRA rules or administrative processes are appropriate to further address suspected financial exploitation and other circumstances of financial vulnerability for senior investors.

This Notice outlines the general retrospective rule review process, summarizes the rules and administrative processes that most directly apply to financial exploitation of senior investors, and seeks responses to a number of questions related to addressing financial exploitation.

Questions regarding this Notice should be directed to:

- James S. Wrona, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8270;
- Jeanette Wingler, Associate General Counsel, OGC, at (202) 728-8013;
- Lori Walsh, Deputy Chief Economist, Office of the Chief Economist (OCE), at (202) 728-8323; or
- Dror Y. Kenett, Economist, OCE, at (202) 728-8208.

## Action Requested

FINRA encourages all interested parties to comment. Comments must be received by October 8, 2019.

Comments must be submitted through one of the following methods:

- Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- Mailing comments in hard copy to:

Jennifer Piorko Mitchell  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment.

**Important Notes:** All comments received in response to this Notice will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.<sup>1</sup>

## Background & Discussion

FINRA's rules are designed to protect investors, and FINRA places a particular emphasis on protecting vulnerable investors like seniors, many of whom are living on fixed incomes and budgets without the ability to offset significant losses over time or through other means. Recent evidence suggests that financial exploitation of seniors has been increasing, in terms of both magnitude and impact.<sup>2</sup> Although studies indicate that financial exploitation of seniors is often perpetrated by strangers, family members and caregivers—rather than by broker-dealers or other financial services organizations—broker-dealers and other financial services organizations have an important role to play in protecting senior investors.<sup>3</sup>

To this end, FINRA is commencing a retrospective review of its rules and administrative processes that help protect senior investors from financial exploitation. The review will assess the effectiveness and efficiency of these rules and administrative processes and consider whether additional tools, guidance or changes are appropriate to further address suspected financial exploitation and other circumstances of financial vulnerability for senior investors.

### Retrospective Reviews

FINRA periodically reviews its rule sets<sup>4</sup> to determine whether they are meeting their intended objectives by reasonably efficient means. These reviews encompass not only the substance and application of a rule or rule set, but also FINRA's processes to administer the rules. The reviews also can explore whether FINRA can provide additional resources to help member firms' compliance efforts or otherwise further the regulatory objectives of the rules. Among other things, FINRA uses this process to determine whether there are gaps in FINRA's rules that need to be addressed.

In conducting the review of rules relating to financial exploitation of senior investors, FINRA staff will follow a similar process to that of previous retrospective rule reviews. In general, the review process consists of an assessment and an action phase. During the assessment phase, FINRA will:

- evaluate the efficacy and efficiency of the rule or rule set as currently implemented, including FINRA's internal administrative processes;
- seek input from both external and internal stakeholders;
- draw on the expertise of its advisory committees and other subject-matter experts inside and outside of the organization; and
- seek out the views and experiences of other stakeholders, including industry, member firms, investors, investor advocates, interested groups and the public.

Upon completion of this assessment, FINRA staff will consider appropriate next steps, which may include some or all of the following: modifications to the rules, updated or additional guidance, administrative changes or technology improvements, additional tools, educational materials or other resources, or additional research or information gathering.

The action phase will then follow. To the extent action involves modification of rules, FINRA will separately engage in its usual rulemaking process to propose amendments to the rules based on the findings. This process will include input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a Regulatory Notice or rule filing with the Securities and Exchange Commission (SEC), or both.

## Request for Comment

### Protecting Senior Investors

FINRA has prioritized protecting senior investors and addressed financial exploitation of senior investors in numerous ways, including:

- identifying senior investor issues as an examination priority;<sup>5</sup>
- launching the dedicated FINRA Securities Helpline for Seniors® (Helpline)—available at (844) 57-HELPS—to provide senior investors and their family members with a supportive place to get assistance from specially trained FINRA staff related to concerns they have with their brokerage accounts and investments;<sup>6</sup>
- creating national standards that give member firms tools—including permitting firms to place temporary holds on disbursements when they have a reasonable belief of financial exploitation and requiring firms to request information from customers about a trusted contact—to address suspected financial exploitation of senior investors and other vulnerable adults (i.e., FINRA Rules 2165 (Financial Exploitation of Specified Adults) and 4512 (Customer Account Information));<sup>7</sup>
- collaborating with the North American Securities Administrators Association (NASAA) and the SEC to address senior investor protection, including issuing a Senior Safe Act Fact Sheet designed to raise awareness among member firms, investment advisers and transfer agents about the Act and its immunity provisions;<sup>8</sup>
- issuing alerts and articles educating investors about important issues and highlighting risks facing senior investors;<sup>9</sup>
- conducting and funding research on senior investors and financial fraud, and engaging with national, state and grassroots partners to develop and distribute fraud prevention resources, educate consumers, and provide training for law enforcement professionals, victim advocates and other people on the front lines of fighting financial fraud;
- issuing Regulatory Notices emphasizing member firms' obligations to senior investors and providing guidance on how to fulfill those obligations;<sup>10</sup> and
- bringing disciplinary actions for misconduct against senior investors.<sup>11</sup>

## Related Rules and Administrative Processes

FINRA is interested in whether additional tools, guidance or changes to FINRA rules or administrative processes are appropriate to further address financial exploitation and other circumstances of financial vulnerability for senior investors. To that end, FINRA is requesting comment on the functioning of its rules and administrative processes that most directly apply to financial exploitation of senior investors. An overview is set forth

below. FINRA recognizes that other FINRA rules and administrative processes not listed here affect member firms' ability to address suspected financial exploitation and FINRA welcomes comment on them as well.

## FINRA Rule 2165

Rule 2165 permits a member firm to place a temporary hold on a disbursement of funds or securities from the account of a "specified adult" customer when the firm reasonably believes that financial exploitation of that adult has occurred, is occurring, has been attempted or will be attempted.<sup>12</sup> Rule 2165 provides member firms and their associated persons with a safe harbor from FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 11870 (Customer Account Transfer Contracts) when member firms exercise discretion in placing temporary holds on disbursements of funds or securities from the accounts of specified adults consistent with the requirements of the rule.

### Application to Transactions

While placing a hold pursuant to Rule 2165 stops funds or securities from leaving a customer's account, the rule currently does not apply to transactions in securities by or for the senior investor.<sup>13</sup> Customers can be exploited through transactions as well as disbursements. However, extending Rule 2165 to transactions may raise complicated issues, such as the possibility of changes in a security's price during the hold and complying with a member firm's best execution obligations.<sup>14</sup>

### Application When No Indication of Financial Exploitation

Rule 2165 provides member firms with a useful tool in protecting a senior investor's assets from financial exploitation by a third party. However, some member firms have requested that FINRA extend the temporary hold provision to situations where a firm has a reasonable belief that the customer has an impairment, such as diminished capacity, that renders the individual unable to protect his or her own interests, irrespective of whether there is evidence that the customer is the victim of financial exploitation by a third party.

### Length of Time of Temporary Holds

Rule 2165 allows a member firm to place a temporary hold on a specified customer's account for up to 25 business days if the criteria in the rule are satisfied. The rule also provides that this period may be extended by a state agency or a court. A number of member firms have indicated that 25 business days is not a long enough period in some instances to resolve the matter and that it can be difficult to obtain an extension from a state agency or a court. These member firms have asked that FINRA extend the period in the rule or create a different mechanism for receiving an extension.

### Reporting Requirements

FINRA Rule 4530 (Reporting Requirements) requires member firms to report specified events to FINRA. Although FINRA considers whether a member firm or associated person had acted consistent with Rule 2165 when assessing reported information about a hold on a disbursement, Rule 2165's safe harbor does not extend to reporting requirements pursuant to Rule 4530. For some situations, FINRA has developed problem codes for use in reporting pursuant to FINRA Rule 4530 to provide clarity regarding the reportable event. To date, FINRA has not developed a dedicated problem code for Rule 2165-related reporting.

Form U4 (Uniform Application for Securities Industry Registration or Transfer), which is used by member firms to register associated persons with FINRA and the appropriate jurisdictions, and Form U5 (Uniform Termination Notice for Securities Industry Registration), which is used by member firms to terminate the registration of associated persons with FINRA and the appropriate jurisdictions, require disclosing customer complaints that meet specified criteria. Rule 2165's safe harbor does not extend to complaints about an associated person whose actions were within the safe harbor that may be reportable on Forms U4 or U5. Rather, whether a complaint is reportable depends on the criteria for reporting under Forms U4 or U5.

### FINRA Rule 3240 (Borrowing From or Lending to Customers)

Lending arrangements between registered persons and customers is an area of interest for FINRA because of the potential for misconduct. Rule 3240 provides a regulatory framework to give member firms greater control over, and supervisory responsibilities for, lending arrangements between registered persons and their customers. Furthermore, member firms may choose to prohibit all or some types of lending arrangements between registered persons and their customers.

Rule 3240 prohibits registered persons from borrowing money from or lending money to their customers unless the member firm has written procedures allowing the lending arrangements and: (1) the customer is a member of the registered person's immediate family; (2) the customer is engaged in the business of lending money and is acting in the course of the business; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship. With the exception of lending arrangements described in (1) and (2) above, Rule 3240 requires that registered persons notify the member firm and the member firm pre-approve in writing the lending arrangements.

FINRA has brought disciplinary actions against registered persons for violating Rule 3240 involving lending arrangements with senior investors. For example, FINRA brought an action against a registered person who entered into lending arrangements with several senior customers contrary to Rule 3240 and firm procedures.<sup>15</sup> In another example, FINRA brought an action against a registered person who attempted to mischaracterize a loan from a senior investor as proceeds from the sale of farm equipment.<sup>16</sup> FINRA also has learned of other instances where registered persons have attempted to avoid the rule's obligations by having another registered person handle the account or by listing a spouse on loan documents.

## FINRA Rule 4512

Rule 4512 requires member firms to make reasonable efforts to obtain the name of and contact information for a trusted contact person upon the opening of a non-institutional customer's account or when updating account information for a non-institutional account in existence prior to the effective date of the amendments (existing account). The trusted contact person is intended to be a resource for the member in administering the customer's account, protecting assets and responding to possible financial exploitation. Member firms are not prohibited from opening and maintaining an account if a customer fails to identify a trusted contact person as long as the member firm makes reasonable efforts to obtain the information.

## A Registered Person Being Named a Beneficiary, Executor, or Trustee or Holding a Power of Attorney or Similar Position

Many registered representatives develop close and trusted relationships with their customers, which in some instances have resulted in the customer naming the registered representative as the customer's beneficiary, executor, or trustee or holding a power of attorney or a similar position. These positions of trust may present significant conflicts of interest, and FINRA has taken steps to address misconduct in this area.<sup>17</sup> To further address these potential conflicts of interest, FINRA intends to consider rulemaking to explicitly prohibit or limit the ability of registered persons to be named a beneficiary, executor, power of attorney, trustee or similar position of trust on the account of a non-family member customer. Any such proposed rulemaking would be published for comment in a separate Regulatory Notice.

## Sanction Guidelines

FINRA's Sanction Guidelines provide both general principles that apply to the overall process of determining sanctions for every case and specific recommendations of a range of sanctions for particular rule violations. The Sanction Guidelines familiarize member firms with a wide variety of typical securities industry rule violations, and the range of disciplinary sanctions that may result from those rule violations. The goals of the Sanction

Guidelines are to assist FINRA's adjudicators in determining the appropriate sanctions in disciplinary proceedings and to provide consistency in the imposition of sanctions. The Sanctions Guidelines include some "principal considerations" to be considered when determining appropriate sanctions. Although the exercise of undue influence and level of sophistication are principal considerations, the customer's age or physical or mental impairments are not currently principal considerations.<sup>18</sup>

## Request for Comments

FINRA seeks answers to the following questions with respect to addressing financial exploitation and other circumstances of financial vulnerability for senior investors:

### Rule 2165

1. Should Rule 2165's safe harbor be extended to apply to transactions in securities, in addition to disbursements of funds and securities? If so, how should changes in security prices be addressed (e.g., where a hold is terminated: (i) by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction; or (ii) upon a determination

that there is not financial exploitation)? Are there other implications of extending the safe harbor to transactions?

2. Should Rule 2165's safe harbor be extended to apply where there is a reasonable belief that the customer has an impairment that renders the individual unable to protect his or her own interests (e.g., a cognitive impairment or diminished capacity), irrespective of whether there is evidence that the customer may be the victim of financial exploitation by a third party? What burdens would be placed on member firms and their registered persons if the safe harbor were extended in this way?

3. Should FINRA extend the temporary hold period in the rule or create a different mechanism to obtain an extension? If so, for how long? How frequently has your firm placed a temporary hold pursuant to Rule 2165 and what has been the duration of any holds? When a hold was placed, did the firm's internal review find support for the reasonable belief of financial exploitation that prompted placing the hold?

4. Has your firm identified any unintended consequences when placing or attempting to place a temporary hold on disbursement of funds or securities from an account under Rule 2165?

#### Rule 4512

5. To gain a better understanding of the effectiveness of the trusted contact provision in Rule 4512: what methods have firms used in seeking to obtain trusted contact person information? What methods have firms found most helpful in obtaining such information? What have been the response rates from new and existing customers in providing the trusted contact person information?

Has your firm suspected financial exploitation of a customer, but not had the trusted contact person information? If so, what did your firm do, if anything? Has your firm sought assistance from trusted contact persons, and, if so, was this outreach constructive?

#### Reporting Requirements

7. Should FINRA develop a dedicated Rule 2165-related problem code for use in meeting reporting requirements pursuant to FINRA Rule 4530?

8. Is guidance needed to address when complaints related to placing a temporary hold pursuant to Rule 2165 should be reported on Forms U4 and U5? To what extent have registered persons received complaints in situations relating to disbursement holds, and have they been reportable complaints?

#### Rule 3240

9. Has Rule 3240 been effective in addressing potential misconduct in lending arrangements between registered persons and their senior customers? Has Rule 3240 been effective more generally as an investor-protection measure?

10. Should the types of permissible lending arrangements in Rule 3240 be modified or should the rule cover a broader range of lending arrangements or relationships?

11. Should the rule address borrowing and lending arrangements that were entered into prior to the existence of a broker-customer relationship?

12. Should Rule 3240 apply for a specified period following an individual ceasing to be a customer (colloquially, a cooling-off period) of the firm or where a customer is reassigned to a different registered representative?

#### Sanctions Guidelines

13. Should FINRA amend the Sanctions Guidelines to add as a principal consideration the fact that a victimized customer is a "specified adult" (i.e., a person 65 or older or a person 18 or older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests)?

#### General Effectiveness, Challenges and Economic Impact

14. Has each rule (mentioned above) effectively addressed the problem(s) it was intended to mitigate? To what extent has the original purposes of, and the need for, a rule been affected by subsequent changes to the risk environment, the markets, the delivery of financial services, the applicable regulatory framework, or other considerations? Are there alternative ways to achieve the goals of a rule that FINRA should consider?

15. What has been your experience with implementation of Rules 2165, 3240, 4512 and 4530 related to senior investors, including any ambiguities in the rule or challenges to comply with it?

16. What have been the economic impacts, including costs and benefits, of the rules mentioned above? To what extent do the costs and benefits have a disproportionate impact on firms based on size and business model? Have the rules led to any negative unintended consequences?

17. Should FINRA require additional disclosure or heightened supervision for any particular product or investment strategy that is marketed to senior investors?

18. Can FINRA make rules, guidance or attendant administrative processes related to senior investors more efficient and effective? If so, how?

19. What additional guidance, tools or resources would be helpful to firms or the investing public to address suspected financial exploitation and other circumstances of financial vulnerability for senior investors? Are there areas where FINRA or the FINRA Investor Education Foundation should conduct additional research or publish additional materials to promote greater awareness and education?

20. Are there other approaches, policies, rules, programs or partnerships not discussed herein that are within FINRA's jurisdiction and mandate that would further benefit senior investors?

In addition to comments responsive to these questions, FINRA invites comments on any other aspects of the rules that commenters wish to address. FINRA further requests any data or evidence in support of comments. FINRA welcomes input not only as to whether or not the current rules are effective and efficient, but also specific suggestions as to how the rules should be changed. As discussed above, FINRA will separately consider during the action phase specific changes to the rules.

## Endnotes

1. Persons submitting comments are cautioned that FINRA does not redact or edit personal identifying information, such as names or email addresses, from comment submissions. Persons should submit only information that they wish to make

publicly available. See Notice to Members 03-73 (November 2003) (Online Availability of Comments) for more information.

2. See, e.g., Consumer Financial Protection Bureau, Office of Financial Protection for Older Americans, [Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends](#) (Feb. 2019). The Report found that suspicious activity report (SAR) filings on elder financial exploitation quadrupled from 2013 to 2017, with financial institutions filing 63,500 SARs reporting elder financial abuse in 2017. The Report also states that these SAR filings likely represent only a tiny fraction of the actual 3.5 million incidents of elder financial exploitation estimated to have happened that year. As covered in the Report, financial institutions that must file SARs include banks, casinos, money services businesses, brokers or dealers, insurance companies, mutual funds, futures commissions merchants and introducing brokers in commodities, loan or finance companies, and housing government-sponsored enterprises.

In addition, a number of recent studies indicate that the vast majority of elder financial exploitation is perpetrated by strangers, family members and caregivers, rather than by brokerdealers or other financial services organizations. See, e.g., Consumer Financial Protection Bureau's Office of Financial Protection for Older Americans, [Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends](#), at 18 (Feb. 2019); [Statistics and Data on Elder Abuse, The National Center for Elder Abuse, Who are the Perpetrators?](#).

3. See id.
4. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.
5. See [2019 Risk Monitoring and Examination Priorities Letter](#) (January 2019).
6. See [www.finra.org/investors/highlights/finrasecurities-helpline-seniors](http://www.finra.org/investors/highlights/finrasecurities-helpline-seniors).
7. See Regulatory Notice 17-11 (March 2017).
8. See the [Seniors Safe Act Fact Sheet](#) .
9. See, e.g., articles such as [Protecting Seniors from Financial Exploitation](#); Investor Alerts such as [Power of Attorney and Your Investments—10 Tips](#), [Plan for Transition: What You Should Know About the Transfer of Brokerage Account Assets on Death](#), and [Seniors Beware: What You Should Know About Life Settlements](#); and FINRA's Retirement webpage for investors.

10. See, e.g., Regulatory Notice 07-43 (Sept. 2007) (reminding member firms of their obligations relating to senior investors and highlighting industry best practices to serve these customers); Regulatory Notice 09-42 (July 2009) (reminding member firms of their obligations with variable life settlement activities); Regulatory Notice 11-52 (Nov. 2011) (reminding member firms of their obligations regarding the supervision of associated persons using senior designations); Regulatory Notice 16-12 (April 2016) (providing guidance on member firm responsibilities for sales of pension income stream products); Regulatory Notice 17-11 (Mar. 2017) (discussing new senior rules and potential financial exploitation of seniors).
11. See, e.g., John W. Cutshall, Order Accepting Offer of Settlement, Case ID 2014041590801 (April 11, 2019); Steven Anthony Olejniczak, Letter of Acceptance, Waiver and Consent, Case ID 2016050107901 (May 8, 2017).
12. The definition of “specified adult” in Rule 2165 covers those investors who are particularly susceptible to financial exploitation. A “specified adult” is (A) a natural person age 65 and older or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. See Rule 2165(a)(1). Supplementary Material .03 to Rule 2165 provides that a member’s reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member’s business relationship with the person.
13. For example, Rule 2165 would not apply to a customer’s order to sell his shares of a stock. However, if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of his account at the member firm, then the rule could apply to the disbursement of the proceeds where the customer is a “specified adult” and there is reasonable belief of financial exploitation.
14. See, e.g., FINRA Rule 5310 (Best Execution and Interpositioning).
15. See, e.g., Michael Mendenhall, OHO Decision, Case ID 2009020489901 (July 25, 2012) (where the registered representative violated Rule 3240 in receiving inappropriate loans from several senior customers).
16. See, e.g., Katherine Ann White, OHO Decision, Case ID 2015045601401 (April 7, 2017) (where the registered person claimed that the receipt of a \$10,000 cashier’s check (plus \$600 profit over the following six months) from a senior investor was not a loan but represented the purchase price for the sale of farm equipment that was never delivered to the customer).

17. See, e.g., Robert Torcivia, Letter of Acceptance, Waiver and Consent, Case ID 2015044686701 (Sept. 26, 2018) (finding, under the facts of the case, that the registered representative violated Rule 2010 in relation to accepting beneficiary designations and having powers of attorney for senior customers and failing to inform the firm of these arrangements).
18. See [FINRA Sanction Guidelines \(March 2019\)](#).