Senior Investor Regulatory Rules and Compliance Practices

Presented on September 26, 2017

Brandon S. Reif
Managing Partner,
California
Reif.B@WSSLLP.com

Benjamin J. Biard
Managing Partner,
Florida
Biard.B@WSSLLP.com

Winget | Spadafora | Schwartzberg | LLP
NY | NJ | CT | FL | CA | TX | IL | CO | PA
www.WSSLLP.com

Vulnerable Clients Defined

- Investors who are ill, elderly* or retired
- Investors who are susceptible to abuse and exploitation
- Investors who may experience diminished mental capacity

*Depending on the state, vulnerable adults qualify at 60 years of age or older

Background Facts

- 10,000 Americans will turn 65 years old every day for the next decade
- Americans aged 65 years and older account for 75% of all financial assets held in the U.S.
- New FINRA Rule 2165 and Amended FINRA Rule 4512 seek to protect senior citizens

FINRA Rule 2165

- Financial Exploitation of Specified Adults
- Temporary holds on disbursements and ACATs
- Transaction holds are not permitted
- Describes a “specified adult” and “financial exploitation”

Amended FINRA Rule 4512

- Expands the customer account information rule: name, residence, associated person responsible for the account
- Members must try to collect “Trusted Contact Person” information
- New disclosure requirement
- When is update requirement triggered?

Signs of Financial Exploitation

- Changes in Power of Attorney, Trustee or Guardian
- Sudden change in trading behavior
- Unanticipated withdrawal
- Trading inconsistent with goals and objectives
- Confusion or memory lapse
- Inability to contact the customer
- Isolation from family or friends
- Unfamiliar people involved in finances

Best Practices for Protecting Senior Investors

- Create a NTM 07-43 Questionnaire
- Encourage clients to appoint a durable POA
- Update account forms at least twice yearly
- Create action plan with clients for life events
- Better documentation of transactions and strategies
- Train RRs to identify and advise vulnerable clients
- Escalation action plan in WSPs (senior docket)

Avoiding Claims By Seniors and Their Heirs

- Use common sense investment advice
  - Avoid complex investments/strategies
  - Do not chase yield
- Learn essential facts:
  - Current medical conditions
  - Directives at death: executor and trustee
  - Relationships with heirs
- Take copious notes to contradict memory loss, death or incapacity

Potential Remedies

- Rescission / Restitution
- Economic and noneconomic damages
- Statutory 2x or 3x damages, see state statutes
- Punitive damages
- Costs of suit, interest, attorneys' fees
- Referral to authorities

Financial Exploitation Cases

- Claimants alleged improper trading in long term municipal bonds and structured CDs
- FINRA Panel awarded $1,797,100, including $1.2 million in punitive damages pursuant to the CA Elder Abuse and Dependent Adult Act

Dancy v. Wedbush Securities, Inc., FINRA Arb 16-00847 (7/13/2017)

Financial Exploitation Cases

- Plaintiff lost approximately $240,000 in life insurance premiums based insurance agent's sales pitch that Diversified Lending Group guaranteed 12% annual return rates
- California jury awarded $15+ million in damages to the senior finding that DLG's $200 million Ponzi scheme to finance life insurance policies deprived the senior of her life savings

Hartshorne v. Metlife Inc., Superior Court of the State of California, County of Los Angeles, Case No. BC576608 (2016)

Financial Exploitation Cases

- Estate of deceased client alleged elder financial abuse against Morgan Stanley by failing to prevent unaffiliated individual’s financial exploitation of client
- FINRA Panel awarded estate damages of $396,623, which includes interest and attorneys’ fees. A dissenting Panel member opined that Morgan Stanley had no legal duty to prevent client disbursements for unaffiliated expenditures

Trottier v. Morgan Stanley, FINRA Arb 15-02910 (5/31/2017)

Financial Exploitation Cases

- Retiree Claimants alleged unsuitable securities transactions in a health care technology startup. Claimants contended that the broker-dealer failed to supervise its associated person
- FINRA Panel awarded Claimants damages of $810,000 plus interest of $147,000 plus attorneys' fees of $250,000

Lashlee v. Source Capital Group, Inc., FINRA Arb 16-0147 (2/1/2017)

Q & A

Brandon S. Reif
Managing Partner - California
Reif.B@WSSLLP.com

Benjamin J. Biard
Managing Partner - Florida
Biard.B@WSSLLP.com