A GUIDE FOR DEVELOPING PRACTICES AND PROCEDURES FOR PROTECTING SENIOR INVESTORS AND VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

NASAA

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WHO

- Identify which persons are covered under state laws designed to fight financial exploitation. (pp. 6-7)
- Identify types of clients who might warrant additional safeguards from financial exploitation, such as those nearing age 65 or exhibiting signs of cognitive decline. (p. 7)

WHAT

- Train frontline personnel (call center staff, financial advisors, branch office staff) to recognize red flags for diminished capacity and financial exploitation. (pp. 9-10)
- Develop training and/or use existing training materials, including asking a state securities regulator to present the NASAA version of the Senior$afe program.
- Train frontline personnel how to communicate with persons experiencing reduced cognition. (pp. 7-8)
- Ask appropriate questions when there are red flags in a manner that always strives to maintain the client's dignity and independence.
- Train frontline personnel on the legal definitions of financial exploitation applicable in their state. (pp. 6-7)
- Develop an internal escalation and reporting protocol. (pp. 13-14)

HOW

REPORTING

- Know the reporting obligations for your jurisdiction (s). (pp. 12)
    - Some states make every "person" in that state a mandated reporter.
- Know whether it is the individual's obligation or the firm's obligation to report financial exploitation.
    - Even if not required to report, protect your client by reporting whenever there is a reasonable belief that a client has been or is being financially exploited or abused.
- Learn what required information is necessary for a report—who, what, when and where. (pp. 14)
    - Use NASAA's ServeOurSeniors.org website to get reporting information for Adult Protective Services.

- Develop clear, detailed internal procedures for reporting, including escalation protocols or incorporate such procedures into existing written supervisory procedures. (pp. 13-14)
    - Develop standard internal reporting forms for accurate and consistent reporting.
    - Consider establishing a specialized unit to monitor activity in accounts of vulnerable customers and clients.

THIRD-PARTY NOTIFICATION (pp. 16-18)

- Develop procedures to encourage clients to utilize customized advance directives, joint accounts, or designation of trusted contacts.
    - Design procedures to achieve compliance with federal and state privacy laws.
    - Make sure designations direct what information can be shared, what authority is conferred, and under what conditions.
    - Consider including the authority to provide notification of suspected cognitive decline.

DELAY IN DISBURSEMENTS (pp. 19-20)

- Develop procedures for internal review and decision making before, during, and after a delay of disbursement of customer funds from an account.
    - Include process for the conduct of any internal review related to disbursement delays.
    - Do not withhold funds longer than is permissible under applicable laws or is reasonably required by the situation in the absence of legal provisions.

ACCESS TO RECORDS (pp. 22)

- Develop strong working relationships with local Adult Protective Services agencies and encourage communications between APS and state securities regulators.
- Provide records requested by APS and law enforcement in a timely and complete manner.

Introduction

Demographers predict that in 16 years, the United States will be home to 72 million older persons, more than twice the number in 2000,[1] and it is estimated that 10,000 people reach the age of 65 every day.[2] Statistics show that baby boomers control more than $13 trillion in household investable assets[3] and as the population ages, the amount of wealth concentrated in the hands of older investors will increase. Unfortunately, for many people, aging is accompanied by diminished capabilities, including a diminished ability to assess and manage financial assets and resources, as well as a heightened susceptibility to financial exploitation.

Protecting older investors has been a long-standing priority for NASAA and its members, making senior investor protection, in light of the trend of diminishing capacity and senior financial exploitation, of keen importance.[4] As part of its ongoing effort to address the aging of America, NASAA formed the Senior Issues and Diminished Capacity Committee (Seniors Committee) in 2014 to undertake certain initiatives aimed at addressing these issues.

Consistent with the Seniors Committee's work to develop informational guides for the securities industry, NASAA has prepared this document to provide broker-dealers and investment advisers with useful information for detecting, reporting, and mitigating senior financial exploitation. Included are suggested practices firms may implement that are designed to detect and address instances of diminished capacity in senior and other clients. This Guide is designed to complement the recently adopted NASAA Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (NASAA Model Act).

With the promulgation of the NASAA Model Act and its ongoing adoption as state law, coupled with clients' aging and diminished capacity, firms should review their policies and procedures applicable to the issues that may arise in dealing with the accounts of seniors.

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[1] *Dealing With Clients Facing Diminished Capacity: Financial Judgments Can Be the First To Go*, IA WATCH (March 17, 2014).

[2] *See* http://www.pewresearch.org/daily-number/baby-boomers-retire/.

[3] *Protecting Senior Investors: Compliance, Supervisory and Other Practices Used By Financial Services Firms in Serving Senior Investors*, SEC (Sept 22, 2008); *see also* Sue Asci, *Retirement of Boomers Will Create Market for Advisers*, INVESTMENTNEWS (Nov. 5, 2007), *available at* http://www.investmentnews.com/apps/pbcs.dll/article?AID=/20071105/FREE/711050311/-1/INIssueAlert.

[4] *See* NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, *available at* http://www.nasaa.org/wp-content/uploads/2011/07/3-Senior_Model_Rule_Adopted.pdf; *see also* Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors, *available at* http://www.nasaa.org/wp-content/uploads/2010/08/SEC-NASAA_Senior_Report_092208.pdf.

Having up-to-date policies and practices in place that address potential cases of diminished capacity and financial exploitation will better equip financial services professionals to: 1) recognize diminished capacity and financial exploitation; 2) understand when and how to escalate reporting of such issues within a firm; and 3) direct reports to governmental agencies that can conduct additional investigations and provide needed services.

This Guide highlights certain requirements and options available under existing state laws, NASAA's Model Act, and voluntary practices, coupled with suggestions on how firms should develop policies and procedures to mitigate potential damage caused by senior exploitation and issues related to cognitive decline or diminished capacity. The Guide is structured around five key concepts: 1) identifying vulnerable individuals; 2) governmental reporting; 3) third-party reporting; 4) delaying disbursements from client accounts; and 5) continuing regulatory cooperation following reports or disbursement delays.

This Guide was compiled after substantial research, including interviews with securities industry associations representing broker-dealers and investment advisers, advocacy organizations for seniors, and other organizations representing agencies on the front lines of addressing senior financial exploitation and diminished capacity issues. NASAA also reviewed and analyzed existing reports and information on this important topic. Where appropriate, this Guide references NASAA Model Act provisions in an effort to assist in implementing its requirements or other similar state laws.

This Guide, however, does not create or modify existing regulatory obligations with respect to senior investors, and does not catalog the full range of compliance practices applicable to senior investors. Rather, this Guide focuses on steps that firms can take to identify and respond to issues that are common in working with senior investors and are likely to assist firms in utilizing the new statutory tools available to address issues related to senior financial exploitation and diminished capacity. We hope this Guide encourages financial services firms to continue to identify and implement additional practices that address the particular needs of senior investors.

Who is a "Senior" or "Vulnerable" Investor?

An initial step in determining how best to protect senior investors or vulnerable adults is identifying who is covered under applicable laws. Therefore, identifying which of a firm's clients may qualify for protection under statutes designed to combat financial exploitation or otherwise protect seniors is the likely starting place when developing policies, procedures, and practices meant to accomplish this goal. Existing laws and the NASAA Model Act often have explicit definitions of which individuals fall under the purview of these statutes. For example, the NASAA Model Act uses the term "eligible adult," and sets out a two-part definition that triggers the Model's other provisions, including reporting requirements. Firms also should consider how they will identify investors who may be targets of abuse, exploitation, or be more likely to suffer from some form of diminished capacity.

Guideline

ESTABLISH POLICIES THAT WILL ASSIST IN THE IDENTIFICATION OF PERSONS COVERED UNDER APPLICABLE STATE LAWS OR REGULATIONS DESIGNED TO FIGHT FINANCIAL EXPLOITATION.

Definitions for Seniors and Vulnerable Adults

Seven states, for instance, have adopted statutes or regulations that set forth a legal framework applicable to broker-dealers and/or investment advisers—or other financial institutions—that are designed to assist these entities in fighting the growing problem of financial exploitation of older adults. The number of state jurisdictions with statutes or regulations on point is increasing quickly. Vermont enacted a regulation that tracks the NASAA Model Act. Other states, including Alabama, Louisiana, and Indiana, have adopted laws with provisions that can be found in the NASAA model. Three states, Delaware, Washington, and Missouri, had laws in place before the approval by NASAA of its model act in January 2016.

As noted above, the NASAA Model Act is applicable to "eligible adults." This term is defined as any individual age 65 or older, and also includes any adult who would be subject to the adopting state's existing adult protective services laws. Although the NASAA Model Act and many other related state laws contain a triggering age, such laws may also apply to adults—regardless of age—exhibiting certain mental or physical disabilities. NASAA's Model Act expressly incorporates the adopting state's adult protective services' definitions.

Firms should develop training programs and procedures to better educate client-facing employees and their supervisors to recognize the signs and red flags that may indicate that a client or customer is in need of APS protections, whether financial or otherwise, or that raise concerns about diminished capacity. It is important to note, however, that certain provisions of state laws and the NASAA Model Act, such as delaying disbursements or notifying third parties, are only applicable if *financial* exploitation of an eligible adult is suspected. Other practices, such as obtaining trusted third-party contact information, may be used to provide similar protections when a client triggers concerns about diminished capacity. Equipping employees with the tools necessary to recognize red flags and other warning signs is critical to mitigating the damage so easily suffered in these situations.

Policies, Procedures, and Training to Recognize Potentially Vulnerable Investors

As noted above, firms should develop policies, procedures, and training programs to teach their employees how to recognize signs of diminished capacity, cognitive decline, financial impairment, or financial exploitation.

Financial professionals, particularly those with an ongoing relationship with the client, are in the unique position of being able to identify early signs of diminished capacity and red flags indicating financial exploitation. Financial professionals often notice, in their previously "sharp" clients, changes in comprehension or impairments to mathematical skills indicating diminished financial capacity that may, because of slow onset, be difficult for family members to recognize. Also, these professionals often can recognize changes in behavior or unusual financial activities that might indicate that the client is being exploited.

Guideline

DEVELOP AND REGULARLY REVIEW TRAINING PROGRAMS DESIGNED TO EDUCATE EMPLOYEES TO RECOGNIZE SIGNS OF DIMINISHED CAPACITY AND FINANCIAL EXPLOITATION.

Early identification of these issues may prevent a client or customer from becoming the victim of financial exploitation. Detecting and recognizing the signs of cognitive impairment or diminished capacity begin with developing strong relationships with the individual customer or client. As part of this relationship building, firms should increase the frequency and quality of communication with their clients, as many of the red flags signaling potential cognitive issues, such as memory lapses, disorganization, arithmetic mistakes, conceptual confusion, and

Guideline

DEVELOP SPECIAL TIPS AND STRATEGIES ON HOW TO COMMUNICATE WITH PERSONS EXPERIENCING DIMINISHED CAPACITY.

impaired judgment, can be detected in routine discussions with clients and customers. Firms should consider providing client-facing and other personnel, such as supervisors and compliance staff, an assessment tool for cognitive skills that can be incorporated into ongoing training on how to communicate with clients.

In discussions with stakeholders, several indicated that many people may be reluctant to talk about cognitive decline, but may be willing to discuss what to do with their finances in the event of a medical or other emergency. Discussions in this context provide an avenue to discuss powers of attorney and other advance directive options. Ideally, these types of discussions between a financial services professional and a client would take place upon account opening, at regular intervals thereafter, and as circumstances dictate. Ongoing communication with a client is critical both to establish a baseline from which to assess any behavioral changes or cognitive decline and to recognize when protective measures may become necessary.

Firms should develop policies and procedures to assist their employees in dealing with clients experiencing cognitive decline. Some examples may include policies and procedures:

- Enhancing supervisory oversight for an account where there is a suspicion that a client may be vulnerable.
- Documenting contact with seniors in case they have problems with lack of recall or need assistance with resolving any misunderstanding.
- Developing escalation procedures. Broker-dealer agents and investment adviser representatives should document suspected diminished capacity and escalate immediately. Policies should indicate to whom the matter should be escalated and when, though employees should be trained to do this early – at the first sign.

Guideline

PROVIDE TRAINING TO FRONTLINE EMPLOYEES ON HOW TO ASK APPROPRIATE QUESTIONS REGARDING POTENTIAL COGNITIVE DECLINE WHILE STILL MAINTAINING A CLIENT'S SENSE OF AUTONOMY AND DIGNITY.

Identifying Red Flags

Guideline

TRAINING PERSONNEL TO ASSIST WITH RECOGNIZING SIGNS OF COGNITIVE IMPAIRMENT DESPITE THE FACT THAT STANDARDS FOR QUALITATIVE ASSESSMENTS ARE UNCLEAR.

An integral component of a firm's policies and procedures should be training to spot the signs of cognitive decline or a reduced capacity to handle financial decisions. While there is no definitive list of the signs of diminished capacity or cognitive decline, in discussions with the various stakeholder groups and a review of prior reports on the subject, the following examples of "red flags" were cited.

- The investor appears unable to process simple concepts, such as:
  - a decline in the ability to do simple math problems;
  - difficulty in understanding important aspects of the account;
  - difficulty with checkbook management; and
  - confusion and loss of general knowledge regarding basic financial terms and concepts such as mortgages, wills, and annuities.
- The investor's behavior is erratic, including:
  - memory loss;
  - difficulty speaking or communicating;
  - inability to appreciate the consequences of decisions;
  - disorientation with surroundings or social settings; and
  - uncharacteristically unkempt appearance.
- The investor exhibits impaired judgment about investments or the use of money, including:
  - interest in get rich quick schemes;
  - extreme anxiety about the nature and extent of personal wealth;

- making decisions that are inconsistent with his or her current long-term goals or commitments; and
- failure to fulfill financial obligations such as paying bills, or paying the same bill multiple times.

Guideline

REVIEW AND CONSIDER ADAPTING EXISTING TRAINING MATERIALS FROM STATE APS AGENCIES AND OTHERS.

In developing policies and procedures and training programs, firms may want to review existing training materials developed by state agencies. These programs typically address the threshold issue of identification of impaired capacity and can be adapted to fit financial services models.[5] The materials also may provide an avenue to enhance relationships between the financial industry and local APS agencies—an important step in protecting the financial well-being of senior clients.

Guideline

TRAINING MATERIALS SHOULD INCLUDE INFORMATION ON RESOURCES FOR ADDRESSING FINANCIAL EXPLOITATION AND OTHER FORMS OF ELDER ABUSE.

Having strong, cooperative relationships among the financial industry, APS agencies, state regulators, and law enforcement is critical, as each group brings a unique perspective, skill set, and ability to act in order to protect seniors. When such cooperative relationships are in place, open communication is fostered between key stakeholders who can work together to protect our aging population.[6]

[5] NASAA has developed a training program entitled Senior$afe, designed for broker-dealers and investment advisers. For more information, please contact your state securities regulator.

[6] Information on how to contact the local APS agency or state securities regulator can be found at www.serveourseniors.org.

Detecting Senior Financial Exploitation

In addition to developing training programs and policies and procedures designed to identify senior and other vulnerable customers and clients, firms should also develop training programs, policies, and procedures designed to detect potential financial exploitation. Existing state law and the NASAA Model Act define financial exploitation and provide broker-dealers and investment advisers with certain obligations and tools that can be deployed to help prevent losses resulting from exploitation. It is important that firms are familiar with these definitions and that their employees are trained to identify the signs that indicate the possibility of financial exploitation. In discussions with securities industry stakeholders, elder advocates, and adult protectives service professionals, the signs and red flags that a senior customer or client could be the victim of financial exploitation include:

- Uncharacteristic and repeated cash withdrawals or wire transfers.
- Appearing with new and unknown associates, friends, or relatives.
- Uncharacteristic nervousness or anxiety when visiting the office or conducting. telephonic transactions.
- Lacking knowledge about his or her financial status.
- Having difficulty speaking directly with the client or customer without interference by others.
- Unexplained or unusual excitement about an unexplained or unusual windfall; reluctance to discuss details.
- Sudden changes to financial documents such as powers of attorney, account beneficiaries, wills, or trusts.
- Large, atypical withdrawals or closing of accounts without regard to penalties.

Guideline

PROVIDE EMPLOYEES WITH INFORMATIONAL MATERIALS DETAILING THE SIGNS OF DIMINISHED CAPACITY AND FINANCIAL EXPLOITATION.

Reporting Senior Financial Exploitation

Together with a program designed to assist firm employees to identify at-risk clients, firms also should clearly set forth the steps that must be taken in instances where financial exploitation of the client is suspected.

Mandatory vs. Voluntary Reporting

Nearly all states have existing state laws contain mandatory reporting requirements when there is a suspicion of elder abuse, whether physical, mental, or financial. Some of these laws specifically mandate reporting by broker-dealers and/or investment advisers.[7] Others, while not explicitly designed for broker-dealers or investment advisers, apply broadly to financial institutions, which may include broker-dealers and investment advisers.[8] Other state reporting laws could apply to broker dealers and/or investment advisers (or their employees) because the reporting requirement applies to all persons.[9] The NASAA Model Act contains a mandatory obligation to report potential financial exploitation when there is a reasonable belief that such exploitation may be occurring. Other states have adopted a voluntary reporting scheme under which broker-dealers and/or investment advisers may report their suspicions regarding the potential financial exploitation of their senior clients, but are not *required* to report.[10]

Broker-dealers and investment advisers, however, should adopt as a firm policy to report suspected financial exploitation *whether or not the firm has a legal obligation to report*. Reporting suspected financial exploitation to the appropriate law enforcement or regulatory or social services agency is a critical step necessary to protect vulnerable investors that firms should voluntarily take.

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[7] *See* Mississippi. MISS. CODE ANN. §43-47-7(1)(a).

[8] *See, e.g.*, Arkansas, ARK. CODE ANN. § 12-12-1708(a)(1); Colorado, COLO. REV. STAT. §18-6.5-108(1)(a)-(1)(b); District of Columbia, D.C. CODE § 7-1903(a)(1); Kansas, KAN. STAT. ANN. § 39-1402(a).

[9] *See, e.g.,* Oklahoma, OKLA. STAT. ANN. tit. 43A §10-104v1; Rhode Island, R.I. GEN. LAWS ANN. § 42-66-8; Florida, FLA. STAT. §415.1034(1)(a).

[10] *See, e.g.*, Missouri, MO. STAT. ANN. § 409.610; Iowa, IOWA CODE ANN. § 235B.3(4).

Reporting Mechanics

The landscape of reporting obligations varies not only as to the mandatory or voluntary nature of the reporting requirement, but also the scope of the permitted or required reporting by individuals or entities. Firms should remain particularly mindful that they, or their employees, may already be subject to certain reporting requirements.[11] It is important for the firm to understand its own, as well as its employees' reporting obligations, and to develop policies, procedures, and training programs accordingly.

Guideline

WHERE THERE IS A REASONABLE BELIEF (AFTER RESEARCHING AND INVESTIGATING A SITUATION) BY THE FIRM THAT A CLIENT HAS BEEN EXPLOITED FINANCIALLY, OR THAT EXPLOITATION IS IMMINENT, A FIRM SHOULD REPORT THE SITUATION TO THE APPROPRIATE STATE AGENCY OR AGENCIES, REGARDLESS OF WHETHER REPORTING IS MANDATED BY LAW.

Policies and procedures should include detailed criteria or red flags that would trigger broker-dealer or investment adviser reporting in compliance with a jurisdiction's reporting triggers and standards. For example, under the NASAA Model Act, a firm's reporting policies and procedures should outline the facts and circumstances that could result in the development of a reasonable belief that financial exploitation has occurred, is occurring, or may occur. The presence or observation of the red flags identified could form the basis for this belief, and might serve as a good starting point for such policies. Further, firms should develop clear, detailed escalation procedures, establishing direct lines of communication to ensure proper reporting. Training on these escalation procedures is critical to ensure that employees understand the steps necessary to report a potentially urgent situation involving a senior investor.

Guideline

UNDERSTAND REPORTING OBLIGATIONS AND TRIGGERS; WHETHER MANDATORY OR VOLUNTARY; AND TO WHOM THE OBLIGATION RUNS, THE FIRM OR THE INDIVIDUAL.

A firm's policies and procedures also should promote internal communication and coordination regarding the reporting of financial exploitation. This is especially important for larger, more complex firms in which one division may not be aware that suspicious activity

[11] NASAA recognizes that under some elder abuse reporting statutes, as under the NASAA Model Act, the duty or ability to report falls on the individual, while in others the duty or ability to report runs to the firm.

has been reported in a customer's account being managed in another division.[12] Such policies and procedures, of course, will depend on the size and nature of each individual broker-dealer or investment adviser and may include the creation of a specified office or division to monitor the activity in designated accounts.

Guideline

DEVELOP CLEAR, DETAILED ESCALATION PROCEDURES, ESTABLISHING DIRECT LINES OF COMMUNICATION TO ENSURE PROPER REPORTING.

Firms' policies and procedures also should mandate the use of specified internal reporting forms to ensure that each report contains pre-determined categories of information. Each firm should develop its own forms, both for internal information gathering and for external reporting, that contain critical information including:

- the name of the client;
- the relevant dates;
- a description of the events that led to the report;
- a description of the steps the firm has taken or expects to take in response to the event; and
- any relevant documentation related to the potential financial exploitation to ensure that the internal stakeholders and any outside agency receiving the report has all of the necessary information to evaluate the report.

These kinds of comprehensive reports will help alleviate inconsistent reporting, which, in the course of developing this Guide, was identified by APS agencies' as a major concern with financial firm reporting.

Guideline

MANDATE THE USE OF SPECIFIED INTERNAL REPORTING FORMS TO ENSURE ACCURATE AND CONSISTENT REPORTING.

Leveraging Existing Policies and Procedures

In developing these policies and procedures, broker-dealers and investment advisers should be able to draw from the policies and procedures already in place

[12] For example, the banking division may not be aware that the securities division is monitoring a particular customer's account.

related to monitoring their client's accounts. For example, firms should be able to leverage and modify their existing compliance framework for detection and prevention of excessive, unsuitable, or unusual trading, for monitoring client correspondence, or for other reporting obligations like Suspicious Activity Reports ("SARs"). Firms should also review other areas of their existing policies and procedures for opportunities to identify and detect areas that may be adapted and modified to facilitate the identification of diminished capacity and the reporting of financial exploitation.

Notifying Third Parties of Potential Issues

Notifying trusted third parties about diminished capacity concerns or unusual or potentially exploitative activity occurring in a senior investor's account can be an additional effective tool to assist in addressing harmful conduct. However, notifying third parties about the financial activity of a senior investor presents many challenges, requiring broker-dealers and investment advisers to implement clear policies to ensure that the concerns of both financial services providers and customers are addressed well in advance of the situation arising.

Privacy Concerns

Sharing financial and other potentially sensitive information with a third party is a delicate subject that raises significant privacy concerns. Before broker-dealers or investment advisers share information with third parties, including a client's family members, firms need to carefully consider potential ramifications of doing so. For example, federal privacy laws generally prohibit the sharing of financial information unless a client or customer has consented or another exception exists.[13] Further, sharing sensitive financial information with third parties, including family members, presents challenges as firms may not know all of the details of the relationship with the third party or family member or family members may be the suspected abusers. Firms, however, can overcome some of these challenges by implementing proactive disclosure and contractual advance directive measures early in the relationships with clients and updating them as appropriate.

Strategies for Effective Third-Party Notification

Developing strong relationships with investors is one of the most important weapons in detecting diminished capacity and in the fight against financial exploitation. Building strong client relationships and planning for more than the client's financial future in isolation before potential issues arise is critical, and particularly important as it relates to third-party notification and advance directives that memorialize a client's chosen course of conduct when faced later with

Guideline

FIRMS SHOULD BE AWARE OF THE PRIVACY CONCERNS AND IMPLICATIONS OF NOTIFYING THIRD PARTIES AS IT RELATES TO FINANCIAL EXPLOITATION AND DIMINISHED CAPACITY.

[13] Many of the federal privacy law concerns stem from provisions in Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., and its implementing regulations such as the SEC's Regulation S-P, 17 C.F.R. § 248.1 et seq.

diminished capacity or financial exploitation. Firms should implement policies and procedures and related training programs that require disclosure, discussion and decisions regarding plans for potential future issues, and develop communication tools that emphasize the importance of future planning. These tools should facilitate discussions to guide the customer toward memorializing advance financial directives and a contingent power of attorney, or other appropriate devices. However, clients can be very resistant to these discussions and, consequently, reluctant to commit to such recommendations. The firm's communication strategies should address this likelihood by developing internal escalation procedures to help further educate customers and clients about the importance of such advanced planning.

Guideline

DEVELOP COMMUNICATION STRATEGIES TO ENGAGE CUSTOMERS AND CLIENTS ON ISSUES RELATED TO ADVANCED PLANNING, INCLUDING THE IMPLEMENTATION OF ADVANCE DIRECTIVES.

One potential strategy reported to be successful by financial professionals is to engage clients and customers on the topic of planning for medical emergencies generally in lieu of a specific discussion focused only on cognitive decline or financial exploitation. This approach could then grow into a discussion of other advance safeguards, with clients more willing to commit to the designation of their "financial agent" or "in case of" contact should the need arise in the future.

Firms should ensure that their employees are familiar with documents such as powers of attorney and advance financial directives, including the features and limitations of each. Policies and procedures should allow clients and customers to utilize customized advance directives or designate trusted contacts and direct what information can be shared and the conditions leading to the sharing. Because these measures are based on client consent, they can be tailored to fit the needs of specific clients and firms. Also, because clients consent to the sharing of such information under certain circumstances, firms that utilize advance directives or trusted contact procedures can minimize many of the privacy concerns discussed previously.

Guideline

DEVELOP POLICIES AND PROCEDURES THAT ALLOW CLIENTS AND CUSTOMERS TO UTILIZE CUSTOMIZED ADVANCE DIRECTIVES OR DESIGNATE TRUSTED CONTACTS AND DIRECT WHAT INFORMATION CAN BE SHARED AND THE CONDITIONS LEADING TO THE SHARING.

It is important, however, that advance directives or other forms of designation be affirmatively discussed and clearly designated, and not be buried in new account forms or privacy policy statements. To assuage concerns about validity, it is critical that customers and clients know why they are designating a contact and for what reason that individual may be contacted. Firms' policies and procedures should also provide clear guidance and processes for reviewing and updating third-party designations on a regular and as needed basis.

Third-Party Notification Under the NASAA Model Act and Other State Laws

The concept of designating trusted contacts is incorporated into the NASAA Model Act. Broker-dealers and investment advisers may only contact previously designated third parties about potential financial exploitation of an eligible adult. The NASAA Model Act's third-party disclosure provision requires the client or customer's consent, while some existing state laws allow for the notification of certain third parties without consent after a report has been made to the proper governmental agencies.[14] Firms should be sure their policies and procedures are designed to ensure compliance with the applicable state and federal law.

Guideline

ENSURE POLICIES AND PROCEDURES RELATED TO THIRD-PARTY NOTIFICATION ARE DESIGNED TO PROMOTE COMPLIANCE WITH FEDERAL AND STATE LAW.

[14] *See, e.g.,* MO. STAT. ANN. § 409.610.

Delaying Disbursements in Situations of Potential Financial Exploitation

Delaying or placing a temporary hold on a disbursement from a client or customer account in an effort to prevent losses from financial exploitation is an important and potentially very effective tool provided to firms in the NASAA Model Act and other existing state laws, and potentially under advance financial directives. Given the potential unintended disruptive consequences of delaying disbursements, however, firms should develop clear and robust policies and procedures designed to effectively utilize these delays and to ensure that such delays comply with the NASAA Model Act and other applicable law, including federal law, any advance directive contractual provisions, and are used only in appropriate circumstances.

Mechanics and Considerations when Delaying a Disbursement

Under the NASAA Model Act and existing state laws, generally, firms are required to complete or to continue a review or investigation after delaying a disbursement. Firms' policies and procedures should describe the procedure, processes, and content of their required internal review before, during, and following the delay of a disbursement. Firms also should develop robust training programs for their employees regarding these reviews and investigations. Such training is an important step in ensuring firms can successfully utilize disbursement delays when appropriate. Similar standards should be applied when the firm relies on a contractual advance directive that provides for a similar delay or hold.

Guideline

DEVELOP POLICIES AND PROCEDURES DESCRIBING THE PROCEDURE, PROCESSES, AND CONTENT OF INTERNAL REVIEWS BEFORE, DURING, AND FOLLOWING A DISBURSEMENT DELAY.

Firms should also have clear procedures and processes to facilitate the notifications required by the NASAA Model Act—notification to account holders and the relevant regulatory agencies—or by other applicable law or contractual advance directive. Because these notifications are often required in order to delay a disbursement, firms should pay particular attention to developing processes for ensuring notification occurs in a timely fashion. For example, firms should clearly designate who is responsible for the notification, whether it be the account's primary representative or someone from the firm's legal or compliance department. Firms also should maintain systems that

facilitate the identification of those authorized to transact business on the account, as each of these people is also required to receive notification of a delayed disbursement under the NASAA Model Act. While no form of notification is specified in existing state laws or the NASAA Model Act, firms' policies and procedures should clearly define the form and contents of these notifications to ensure accurate and consistent notification. Firms also must ensure that such notifications are not sent to the suspected perpetrators of the financial exploitation. This is of particular importance for firms that may develop some type of automated notification system.

Guideline

DEVELOP CLEAR PROCEDURES AND PROCESSES TO FACILITATE THE NOTIFICATIONS REQUIRED WHEN A DISBURSEMENT DELAY IS UTILIZED.

Firms' notification procedures must also provide for clear guidance on which regulators to notify and the time frames for such notification. It is important to note that the state securities regulator and the local APS agency must be notified of a delayed disbursement under the NASAA Model Act, regardless of whether the agencies have already received notice of suspected financial exploitation. Further, the notification to the agencies should contain at least the same information as the notice to the account holders. Following a disbursement delay, firms should maintain open communication with state securities regulators and local APS agencies to report their internal findings, and they should fully cooperate with any concurrent agency investigation or action. This will ensure that the agencies have the information they need to act on any potential exploitation.

Communicating with Investors and Other Important Considerations when Delaying Disbursements

Firms also should develop communication tools to inform their customers and clients of the possibility of a delayed disbursement in situations of potential financial exploitation. As with third-party designations, the possibility of a delay in the disbursement of funds due to reasonably suspected fraud should be communicated clearly and conspicuously to customers and clients and not only appear in the fine print of a customer's account agreement or advisory contract.

Firms should carefully monitor the timing of delayed disbursements to ensure that funds are not withheld longer than is permissible. Firms should also closely monitor the timing of the delay as it relates to their internal investigation, as, under the NASAA Model Act, any delay

beyond 15 business days must be authorized by the state securities regulator or APS agency, and the firm may need to seek court authorization if a delay longer than 25 business days is necessary.

Further, ensuring that a senior investor's funds are not unnecessarily delayed is critically important, as a delayed disbursement can have a significant impact on a senior investor. For example, if funds are delayed, senior investors could fall behind on paying their bills or checks they have written may bounce, which could result in additional fees. Firms should be mindful of these concerns when determining whether or not to delay disbursements and for how long. Firms' policies and procedures should be designed to minimize the time required to complete any required internal review or investigation and make the required notifications and reports. If these actions are completed in a timely manner and the proper authorities are involved, the consequences of a delay can be mitigated.

Guideline

CAREFULLY MONITOR THE TIMING OF DELAYED DISBURSEMENTS TO ENSURE THAT FUNDS ARE NOT WITHHELD LONGER THAN IS PERMISSIBLE.

Access to Records

Combatting financial exploitation involves cooperation among the private sector, regulatory agencies, APS, and law enforcement. With that in mind, and in an effort to strengthen relationships between the securities industry and state APS offices, this Guide contemplates, and NASAA's Model Act requires, that firms provide APS and law enforcement the relevant documents related to suspected financial exploitation. Regardless of whether mandated in state law, firms should develop strong working relationships with their local APS agencies and cooperate in APS investigations that may involve a firm's client or customer.

With the goal of fostering cooperation and better communication, a firm's policies and procedures should include specific guidelines and requirements regarding how to respond to inquiries from APS agencies, securities regulators or law enforcement whether the inquiry is instigated by the filing of a report of suspected financial exploitation or otherwise. Such cooperation will address a major concern raised by APS agencies regarding the reports of financial firms and the firms' the lack of engagement following an initial report: particularly, in the experience of some APS agencies, financial firms report, but fail to respond to follow-ups or requests for additional information in a timely fashion. Given the often urgent nature of financial exploitation, maintaining clear, open communication channels is critical, and firms should develop policies that promote this communication.

Guideline

FIRMS SHOULD DEVELOP STRONG WORKING RELATIONSHIPS WITH THEIR LOCAL APS AGENCIES AND STATE SECURITIES REGULATOR AND COOPERATE IN APS OR OTHER INVESTIGATIONS THAT MAY INVOLVE A FIRM'S CLIENT OR CUSTOMER.

Conclusion

While developing this Guide, NASAA has learned that many firms already have begun to implement successfully many of the suggestions in this Guide. While this is encouraging and formed the basis for many of the suggestions, NASAA hopes that more broker-dealers and investment advisers will think critically about protecting their senior clients from the adverse consequences of financial exploitation and diminished capacity. Implementing robust policies and procedures and training programs that encourage firms to address these issues holistically, and that foster strong relationships amongst industry, state securities regulators, local APS agencies, and law enforcement, will be a significant step toward addressing the serious issues facing seniors and other vulnerable investors.