Financial Exploitation of Seniors and Vulnerable Adults

ACLI Compliance and Legal Sections Annual Meeting
 Speakers

- **Marsha Hunt** Senior Liaison Officer at Financial Crimes Enforcement Network (FinCEN)
  - Ms. Hunt’s portfolio consists of the U. S. Securities and Exchange Commission, the U. S. Commodity Futures Trading Commission, the Federal Housing Finance Agency, and insurance products that fall under the Bank Secrecy Act covered products. Prior to Ms. Hunt’s tenure at FinCEN she was an FBI Analyst for five years and a Registered Representative and Supervisory Principal in the securities sector for ten years.

- **Ted Holt** Attorney, Maynard, Cooper, and Gale, P.C.
  - Ted is co-chair of the Insurance & Financial Services Litigation Practice Group. He litigates on behalf of insurance and financial services clients in a variety of disputes throughout the country including sales practices, breach of contract and fiduciary duty, and bad faith claims handling in both individual and class actions. Ted received his J.D. from the University of Alabama School of Law, and he holds an M.B.A. from the University of Alabama at Birmingham and a B.A. from Rollins College.

- **Lara Gillett** Director, Compliance Guardian Life Insurance Company of America
  - Lara has been in the insurance and securities industry for 20 years ago with various firms and in various compliance roles. Currently, Lara oversees the compliance training program including the development of the Firm Element curriculum and the Annual Compliance Meeting; manages updates to the Compliance Policies and Procedures Manual; and developed their Vulnerable Investor Protection Program, for which she handles financial exploitation allegations and cases. Lara earned the CRCP (Certified Regulatory and Compliance Professional) designation from Wharton University of Pennsylvania Executive Education program, and holds the FINRA Series 7, 24, 51, 63, and 65 licenses.
Topics

- Aging Population
- Rule 4512/Rule 2165
- Senior Safe Act
- State Legislation
- AML/SAR Reporting -

FinCEN
- Diminished Capacity
- Financial Exploitation
- Concerns
- Resources
Aging Population – Population Aged 65 and Over: 1900 to 2050
Aging Population – Population Aged 85 and Over: 1900 to 2050
Regulatory Changes

- Regulatory Notice 17-11
- FINRA Rule 2165 (New)
  - Effective 2/5/2018
  - Protection for specified adults
    - Over 65
    - “Specified Adults”
  - Temporary hold(s) on disbursements
  - Conduct internal review of facts and circumstances
  - Training
  - Policies and Procedures
Regulatory Changes

FINRA Rule 4512 (Amended)

Reasonable efforts to obtain Trusted Contact Person (“TCP”)

• At least 18

• Customers can refuse to furnish a TCP & firms can still open and maintain accounts

• Firm must have an authorized person to contact the TCP
  ✓ Contact within 2 business Days
  ✓ Disbursement holds up to 15 business days
Recent Federal Legislation

**Senior Safe Act (2018)**
- Immunity for disclosing in good faith and with reasonable care financial exploitation of a senior to a regulator or law enforcement.
- Applies to banks, credit unions, investment advisors, broker-dealers, insurance companies and certain supervisory, compliance and legal employees who receive training to recognize abuse.
- Designed to work in tandem with state law, preempting state laws that provide less protection.
- Effective May 24, 2018

**Elder Abuse Prevention and Prosecution Act (Oct. 18, 2017)**
- Expands data collection and information sharing to prevent financial crimes against seniors.
- Broadens federal criminal code to include telemarketing and email marketing fraud.
- Enhanced penalties for fraud and increased training for federal investigators and prosecutors.
- Requires FTC’s Bureau of Consumer Protection and DOJ to appoint elder justice coordinators.
State Legislation

- Protections
- Adult Protective Services
- Fraud and Prevention Acts
- Mandatory reporting by financial institutions
  - Broker/Dealers, Investment Advisers
  - Immunity for reporters
- Perpetual new legislations across states
  - Statutory update on Elder Abuse and Financial Exploitation Statutes can be found at:
    - https://www.justice.gov/elderjustice/prosecutors/statutes
Compliance & Legal Sections Annual Meeting

Reported SARs

- Money Services Business (MSB) 89,586
- Other 7,158
- Securities/Futures 6,528
- Insurance Company 950
- Loan or Finance Company 99
- Casino/Card Club 71
- Tribal Authorized Casino 40
- State Licensed Casino 28
- Card Club 3
- Housing GSE 12

Depository Institution 95,876
Increased Reporting of EFE in SARs
Know Red Flags For Diminished Capacity

Examples:

- Customer has difficulty speaking or communicating;
- Customer is unable to appreciate the consequences of decisions;
- Customer makes decisions that are inconsistent with his or her long-term goals or commitments;
- Customer is concerned or confused about missing funds in his or her account;
- Customer is aware of, but does not understand, recently completed financial transactions;
- Customer’s behavior is erratic.
Establish Protocols and Responses to Diminished Capacity & Suspected Exploitation

- Establish escalation procedures;
- Train employees to escalate early;
- Prohibit securities professionals from making recommendations to the investor until the concern no longer exists;
- Review client account to identify any transactions or patterns that could indicate he or she has been taken advantage of;
  - Report to federal, state, and local entities if abuse is suspected
- Communicate with investor’s designated Trusted Contact Person or the POA.
Know the Red Flags for Elder Exploitation

- Isolation – “Orphaned Elders”
- Changes in Financial Behavior
- Changes in Financial Management
- New individuals accompanying elder
- New POA or caregiver
- Large/New Expenditures
- Inability to Explain Missing Money/Valuables
- Checks Written to Cash
- Unfamiliar signatures
Failure to Detect, Report, and Stop, Elder Exploitation is Expensive

- Elder abuse claims generally accompany breach of contract, misrepresentation, breach of fiduciary duty, and/or consumer protection claims;
- Half of elder abuse cases are filed in California;
- Two common fact scenarios:
  - Carrier/broker dealer accused of exploiting elders, either through agents/reps or based on product features; and
  - Carrier/broker dealer accused of failing to detect/stop elder exploitation by third-parties.
Federal

- American Bankers Association (ABA) - Protecting the Elderly from Financial Abuse
  

- Consumer Financial Protection Bureau (CFPB) Advisory/Report for Financial Institutions on Preventing Elder Financial Abuse
  

- CFPB/FinCEN Joint Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation
  

- CFPB Memorandum on Financial Institution and Law Enforcement Efforts to Combat Elder Financial Exploitation
  
Resources

Federal

- Department of Justice (DOJ) Elder Justice Initiative (EJI)
  https://www.justice.gov/elderjustice

- Department of Justice Elder Abuse and Elder Financial Exploitation Statutes
  https://www.justice.gov/elderjustice/prosecutors/statutes

- Financial Crimes Enforcement Network (FinCEN) Advisory to Financial Institutions on Filing Suspicious Activity Reports Regarding Elder Financial Exploitation
  https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2011-a003

- Financial Industry Regulatory Authority (FINRA)-Protecting Seniors and Vulnerable Adults from Financial Exploitation (Rule 2165, and 4512)
Resources

Federal

- Interagency Guidance on Privacy Laws and Reporting Financial Abuse of Older Adults
  

- U. S. Department of Health & Human Services
  
  https://www.hhs.gov/aging/elder-justice/index.html

- U. S. Securities and Exchange Commission (SEC)
  
  https://secsearch.sec.gov/search?utf8=%3F&affiliate=secsearch&query=elder+financial+exploitation
Resources

National

➢ National Adult Protective Services Association
  
  http://www.napsa-now.org/policy-advocacy/exploitation/

➢ National Center on Elder Abuse
  
  https://ncea.acl.gov/whatwedo/policy/state.html

➢ White House Conference on Aging Final Report
  
Resources

Miscellaneous

➢ Money Smart for Older Adults Resource Guide

➢ Money Management Tools
Questions?