2016 NASAA
Broker-Dealer Coordinated Exam:
Summary of Preliminary Results

September 2016

Introduction

NASAA is the voice of state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. The role of NASAA members in securities regulation is crucial as they serve as the first line of defense for investors from every walk of life. As part of their role on the front lines of emerging issues in securities regulation, NASAA and its members consider protecting senior investors a core part of their mission. With 10,000 Americans projected to turn 65 every day between now and 2030,[1] and in excess of 77 percent of all financial assets in the United States concentrated in the hands of those individuals,[2] NASAA and its members believe that protecting senior investors is essential. Indeed, according to one study, seniors lose $2.9 billion to financial exploitation every year.[3] Furthermore, in an environment of low interest rates, yet increasingly lengthy retirements, senior investors are facing the challenge of searching for higher yielding investment products, which often come with increased risk.

In the last decade, NASAA and its members have developed a number of initiatives aimed at protecting senior investors, from policy matters, to advocacy, and even regulatory actions. Policy initiatives by NASAA and its members have included a 2008 joint report with the SEC and FINRA on issues related to senior investors;[4] the drafting of a model rule addressing so-called "senior designations" and a model act to address the financial exploitation of vulnerable adults; the development of the Senior$afe Training program for financial professionals as well as the Serve Our Seniors website; and strong support for the Senior$afe Act of 2016 in the United States Congress. These initiatives have been in addition to the day-to-day work of

[1] *See* "Baby Boomers Retire," Pew Research Center, available at http://www.pewresearch.org/daily-number/baby-boomers-retire/.

[2] Securities Industry and Financial Markets Association, Senior Investor Protection White Paper: SIFMA and The Industry's Efforts to Protect Senior Investors, Apr. 27, 2016, available at http://www.sifma.org/issues/item.aspx?id=8589960115.

[3] The MetLife Study of Elder Financial Abuse, June 2011, available at www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf.

[4] Protecting Senior Investors: Compliance, Supervisory and Other Practices Used by Financial Services Firms in Serving Senior Investors (2008 Joint Report) (Sept. 22, 2008), available at https://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf.

NASAA members conducting examinations and initiating enforcement actions related to the exploitation of seniors and other vulnerable investors.

In 2016, NASAA members conducted a coordinated exam of broker-dealers ("Coordinated Exam") on issues related to senior investors. The Coordinated Exam sought information from the examined firms on policies, procedures, and training related to seniors and other potentially vulnerable customers. Twenty states sought information in several categories, including, among others:

- Proactive assessment efforts by the firms related to senior investors;
- Training provided by broker-dealers to employees regarding senior investors, the identification of elder abuse, and diminished capacity;
- Supervisory policies, procedures and other controls potentially relevant to senior investors; and
- Potential suitability concerns identified by member jurisdictions.

This report summarizes the preliminary findings as part of the ongoing dialogue between broker-dealers and NASAA members on the important issue of protecting senior investors.

COORDINATED EXAM HIGHLIGHTS:

- Approximately 20 percent of the exams involved a broker-dealer that has not established written supervisory procedures on **any** of the key senior issues focused on during the Coordinated Exam.
- The Coordinated Exam focused on three key senior investor related training topics. More than 62 percent of the exams related to a firm that offers training on **all** of these topics.
- There appears to be limited development of "trusted contact forms" at firms, and very limited use of the forms even after they are developed.
- Only 24 percent of the exams related to a brokerage that requires verification of senior clients' profile information more frequently than every 36 months.

- Potentially unsuitable recommendations to senior investors were identified in 10 percent of the exams.
- Firms permitting the use of "senior designations" may need to improve related controls and procedures.
- At most offices where *any* complaint had been filed in the 24-month period, the majority had been filed by senior clients.

Overview

The 2016 NASAA Coordinated Exam included 62 exams of broker-dealer offices during which the examination teams reviewed activity in senior client accounts. The Coordinated Exam primarily utilized a module designed for purposes of the Coordinated Exam. In addition to highlighting states' observations about broker-dealer practices, the Coordinated Exam was designed to identify possible relationships between supervision/training practices and sales related issues with senior clients. To that end, the exams collected information about each examined firm's policies and supervision practices along with transactional data.

The exams covered various broker-dealer models and office types. There were no mandates established with respect to the firms examined for the Coordinated Exam. Instead, each jurisdiction was encouraged to select the firms and offices examined in accordance with the jurisdiction's normal practices. This allowed for the jurisdictions to better account for qualitative and quantitative data and to maximize their ability to conduct relevant examinations.

The vast majority of the exams were conducted at branch or non-branch locations of broker-dealers while only a handful were identified as having been conducted at the firm's home office. Therefore, the data collected provides insight on the extent to which firms' policies and procedures related to senior investors have been implemented at remote locations.

At least 39 unique firms were examined during the Coordinated Exam. Some jurisdictions did not identify the name of the firm examined in accordance with jurisdictional requirements and practices. Consequently, these preliminary findings are being presented in terms of the number of exams conducted (i.e., X percent of the exams conducted indicated that the broker-dealer had a violation).

Committees or Personnel Dedicated to Senior Investor Issues

There are many complex and often sensitive issues that must be considered in order to better protect senior investors. Industry leaders have taken this charge very seriously, and many have created formal committees to develop useful practices and procedures. Some of the firms that have not created a senior investor-focused committee have at least designated one or more persons to address senior investor-related issues. Approximately 62 percent of the exams found that the broker-dealer had established a formal committee or designated at least one person to focus on senior investor issues.

Supervisory Procedures

Broker-dealers are required to establish and maintain supervisory systems and written procedures that are reasonably designed to ensure compliance with applicable securities laws.[5] Regulatory guidance has highlighted the importance of accounting for a firm's obligations to senior clients.[6] As a result, the Coordinated Exam assessed whether broker-dealers had developed written procedures specific to key concern areas and had incorporated enhanced controls into the firm's supervision of activity in senior client accounts.

The Coordinated Exam focused on whether the subject broker-dealer had implemented written procedures specific to four key issues:

(1) The suitability of recommendations to senior investors;
(2) Communications with seniors;
(3) Escalation protocols in the case of suspected elder abuse; and
(4) Escalation practices in response to signs of diminished capacity.

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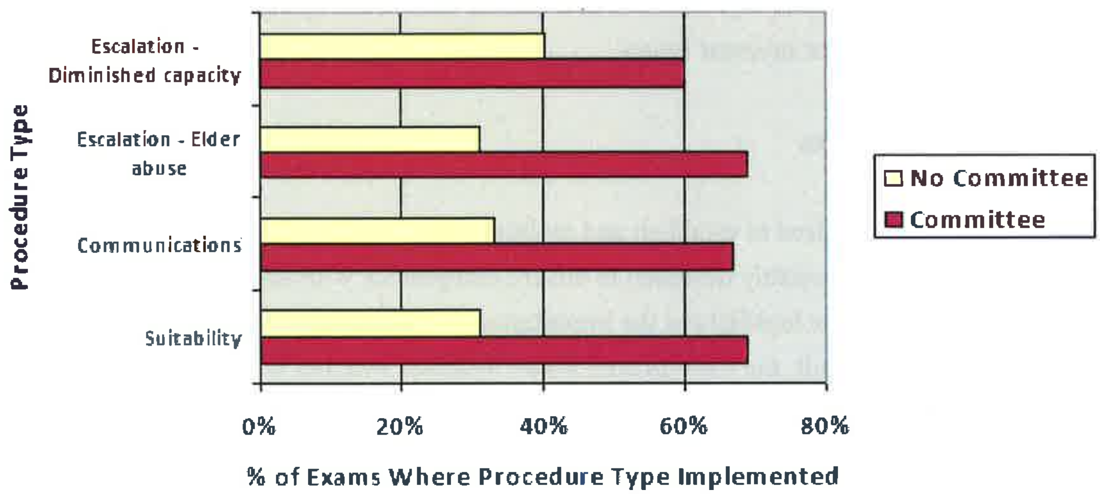
[5] *See, e.g.* Uniform Securities Act § 204(a)(2)(J); *see also* FINRA Rule 3110.

[6] *See, e.g.* FINRA Regulatory Notice 07-43, September 2007, available at http://www.finra.org/sites/default/files/NoticeDocument/p036816.pdf.

About 39 percent of the exams resulted in findings that the brokerage had established written procedures addressing all four of these areas. On the other hand, 20 percent of the exams found that the brokerage had not established written procedures addressing *any* of the four areas.

As the chart below indicates, a firm with developed procedures on key areas related to senior investors is more likely to have designated a committee or personnel to focus on senior investors.



Training

There is some complexity and a great deal of sensitivity involved in identifying signs of elder abuse and diminished capacity. Similarly, the steps necessary to protect vulnerable seniors from various forms of intended and unintended harm can be equally complex. There are entire government agencies across the country dedicated solely to assisting senior citizens. Financial service professionals are not expected to be experts in this realm. However, they are well-positioned to serve as front-line defenders against the harm that elder abuse and diminished capacity may cause. Mandating participation in well-developed training will assist representatives and their firms in navigating those complexities and in protecting their senior clients.

The Coordinated Exam included an assessment as to whether examined firms currently provide training on communicating with seniors, escalating elder abuse and diminished capacity concerns, and suitability considerations for senior clients. Importantly, more than 62 percent of the exams found the firms offer training on all of these subjects. Moreover, virtually every firm that provides training on all three of the areas actually mandated that representatives take one or more of the trainings.

Communications with Senior Clients

Firms have recognized the need to take steps to improve their communications with senior clients. A 2008 report by NASAA, the SEC, and FINRA indicated that firms reported adopting practices such as increasing the frequency of contact with senior investors to stay on top of financial needs/life events and communicating in writing and documenting conversations with senior clients.[7] Such measures are essential to enhancing a firm's ability to prevent and mitigate the effects of elder abuse, but also toward recognizing signs of diminished capacity and supporting the recommendation of suitable investments by their representatives.

Trusted Contact Forms

One of the tools commonly discussed by financial service firms with respect to combatting the effects of elder abuse and diminished capacity is the "trusted contact form." Of course various names are used for this type of form, but the primary goal is the same. For purposes of the Coordinated Exam, a "trusted contact form" was defined as a form that captures the name and contact information of a trusted person that the firm may contact for purposes of administering

[7] 2008 Joint Report, *supra*, note 4 at 5.

the account or in the event of financial exploitation concerns.[8] Yet, only 39 percent of the exams indicated that the firm used some version of a trusted contact form.

To the extent this preliminary finding does not correspond with a broader impression of the use of trusted contact forms, this preliminary finding could indicate that awareness, and use, of trusted contact forms may be limited at certain branch locations.

In addition to asking if a firm has developed a form to collect trusted contact information, the Coordinated Exam also assessed how often the trusted contact information is actually collected. At firms where a trusted contact form was in use, less than 15 percent of all senior clients reviewed at those firms during the Coordinated Exam had a completed form.

There are various reasons why such information may not yet be on file. For example, a key factor could be whether or not the trusted contact form is only presented to a client at the time the account is opened or the client's profile is updated. The relatively recent implementation of trusted contact forms may also impact the current rate of use. More significant is the reality that many clients may hesitate to share such information, either out of concern about the privacy of the contact person or concern about allowing anyone else access to their own financial information. Financial service firms would be well advised to review their practices and communications related to trusted contact forms to maximize their ability to collect this information, especially from senior clients.

Frequency of Communications

There are many benefits to frequent communication with senior clients. In addition to serving client needs, frequent communications enhance the ability of representatives and brokerages to identify signs of diminished capacity or elder abuse. Moreover, frequent communications allow firms to update trusted contact information and key client profile information more

[8] Because such information may also be collected through other means, such as on new account opening forms, an affirmative response was required even is this type of information was collected on another form designed to collect additional information.

often. Some firms have long recognized the value of communicating more with senior clients.[9]

However, only 24 percent of the exams involved a firm that required verification of customer profiles of senior investors more often than the legal requirement of 36 months. Of course, it is possible that a firm verifies the profile information more often than every 36 months, but does not formally document more frequent verifications of senior clients' customer profile information. In any event, documentation of these verifications serves an important risk management purpose and may reflect the extent of a firm's investment in developing practices designed to protect its senior clients.

Other Communication Related Measures

The Coordinated Exam also sought to assess different ways that the brokerage industry has amended its communication methods with senior investors to account for common age-related changes in physical abilities, to identify/combat effects of elder abuse, and for general business risk management purposes. Firms examined during the Coordinated Exam have taken steps such as:

- Increasing the size of the font used in certain written communications;
- Documenting verbal communication more regularly; and
- Requiring meetings with senior clients to take place at the firm's office.

Suitability

An investor's age is obviously not the only factor to consider in a suitability analysis, but age can affect many of the other factors typically considered in a suitability analysis such as risk tolerance and investment objectives. Furthermore, senior investors who are retired face a greater challenge in overcoming the negative effects of an unsuitable recommendation that results in losses or a lack of sufficient liquidity.

[9] *See* 2008 Joint Report, *supra*, note 4 at 5-8.

Procedures and Controls

Broker-dealers are required to review trading activity in all client accounts. The Coordinated Exam sought insight into whether brokerages would take the position that they did not need to establish procedures *specific* to suitability for senior investors. That is, do firms feel there is no need for specific procedures because age and life circumstances should be considered in connection with securities recommendations to most, if not all, individual clients.

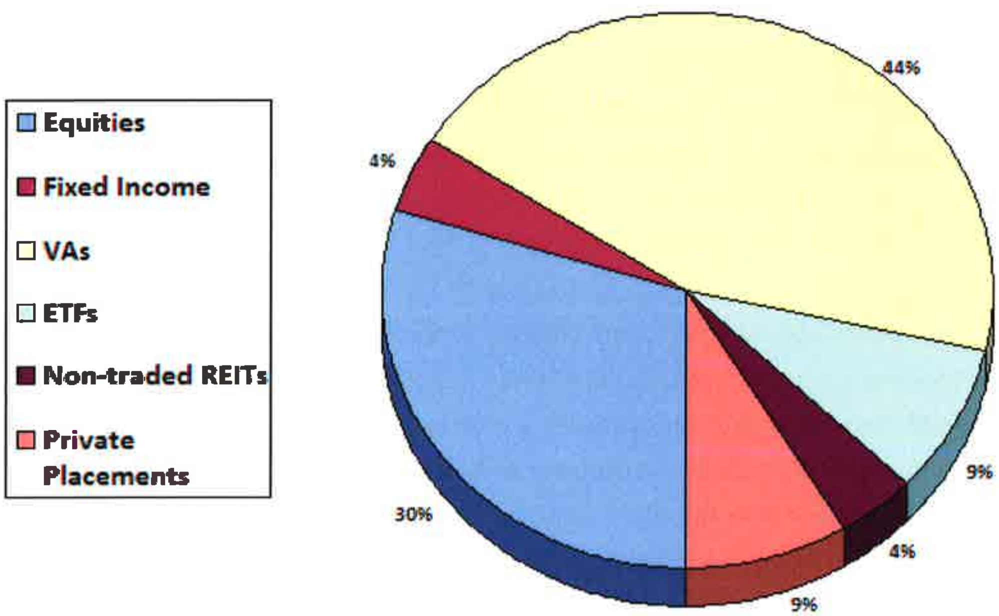
However, more than 72 percent of the exams found that firms had developed specific written procedures associated with suitability of recommendations to senior clients. Some firm responses suggested a view that suitability procedures specific to seniors were not necessary because of general suitability considerations. However, such a view appears to be in the minority.

Of the 45 exams where senior specific suitability procedures had been implemented, 21 involved a firm that mandated heightened reviews for the sale of certain investment products to seniors. Variable annuities and "alternative investments" were the primary product types for which firms mandated heightened reviews based on a specific age. Examples of alternative investments include, among others, investments in non-traded real estate investment trusts (REITs) and business development companies (BDCs). Examined firms utilize ages ranging from 55-80 as triggers for mandating heightened review before approving sales of selected products. One of the examined firms required heightened review before approving options activity for clients over the age of 70.

Broker-dealers are required to review trading activity in client accounts even in the absence of red flags. Interestingly, only 39 percent of all exams found that broker-dealers include clients' ages on the trade records used in connection with regular trade reviews. The inclusion of the age on trade review records could greatly improve a supervisor's ability to identify potentially unsuitable recommendations generally and specifically with respect to senior investors. Moreover, including the age on records reviewed by a supervisor would increase the number of firm personnel that might note suspect activity in an account that might indicate age-related diminished capacity or elder abuse.

Potentially Unsuitable Recommendations

Approximately 10 percent of the exams included in the Coordinated Exam identified potentially unsuitable recommendations to senior investors. The graph below is a breakdown of the frequency with which various products types were associated with the potentially unsuitable recommendations made to 41 senior clients included in the Coordinated Exam.



That variable annuities were the product most frequently associated with potentially unsuitable recommendations reinforces the importance placed on serving senior clients by state and federal securities regulators. In recent years, regulators have expressed concern about sales practices associated with variable annuities sales to senior investors.[10] In particular, there is a general concern with the sale of variable annuities to senior clients or those approaching retirement because of the penalty rates associated with early withdrawals.

Potential suitability issues were also identified with exchange-traded funds (ETFs) sold to seniors. The suitability concerns with ETFs primarily relate to non-traditional ETFs, such as leveraged and inverse ETFs. The "reset" periods associated with these products, which are often daily, can affect the suitability determination because the products are designed to achieve their objective within the reset period. Firms should closely monitor any sales of these products to senior investors given that these products are designed to be used as part of short-term trading strategies.

While traditional equities are not regularly discussed as priority concerns, regulators and the industry should note that 30 percent of suitability concerns identified during the Coordinated Exam involved equities. In fact, potential suitability issues related to equities far outweighed any identified concerns with other products that have received increased regulatory attention over the last few years such as non-traded REITs.

In the exams that evinced suitability concerns, there was no correlation with lack of training as the suitability concerns almost all occurred in exams of firms that actually *required* training on both senior investor suitability and communicating with seniors. Whether the potentially unsuitable recommendation was in fact unsuitable as well as whether the potentially unsuitable recommendations took place after the representatives participated in the mandatory training is beyond the scope of this report. Nonetheless, this finding should serve as a reminder to the industry that the mere existence of a training program, even a mandatory one, may not be enough if the training program is not adequately designed to effectively train representatives, if supervisors rely too heavily on the training, or if a firm ineffectively screens candidates at the hiring stage.

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[10] *See, e.g.* NASAA Informed Investor Alert: Annuities, available at http://www.nasaa.org/2692/informed-investor-alert-annuities/; *see also* FINRA Investor Alert: Variable Annuities Beyond the Hard Sell, available at https://www.finra.org/sites/default/files/InvestorDocument/p125846.pdf.

Marketing to Senior Investors

Through rulemaking and the issuance of industry-oriented guidance, financial service regulators have consistently stressed concern over potentially misleading marketing efforts related to senior investors.[11] Therefore, the Coordinated Exam reviewed common areas of concern to assess the prevalence of certain practices.

Seminars

Seminars targeting seniors, and especially "free lunch seminars," have been the subject of many investor alerts by state and federal regulators.[12] A report issued in 2007 by NASAA, the SEC, and FINRA concluded these seminars are designed to sell investments even though they are often touted as "educational;" attendees may not understand that the seminar is sponsored by a company tied to investments discussed at the seminar; and there were apparent weaknesses in firms' supervision of seminars.[13]

Thirteen of the offices examined had offered one or more investor-oriented seminars within the prior 12 months. Approximately 50 percent of these offices had offered seminars focused on senior investors or those approaching retirement. Importantly, these six exams resulted in no findings of concern by the examining jurisdiction. So, while concerns related to senior seminars still exist, the industry appears to have implemented improvements related to senior seminars.

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[11] *See, e.g.* 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.

[12] *See, e.g.* NASAA Investor Alert: Free Meal Seminars, available at, http://www.nasaa.org/1950/senior-investor-alert-free-meal-seminars/; *see also* FINRA Investor Alert: "Free Lunch" Investment Seminars—Avoiding the Heartburn of a Hard Sell, available at http://www.finra.org/investors/alerts/free-lunch-investment-seminars.

[13] Protecting Senior Investors: Report of Examinations of Securities Firms Providing "Free Lunch" Sales Seminars, (Sept. 2007), available at https://www.sec.gov/spotlight/seniors/freelunchreport.pdf.

Senior Designations

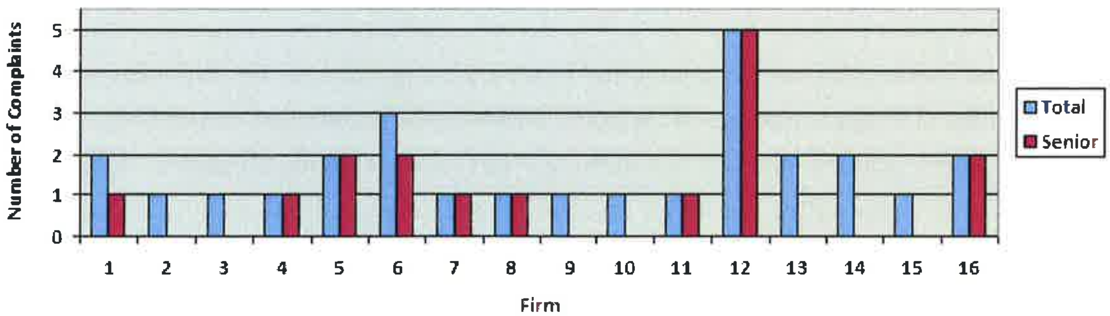
Approximately one-third of all exams involved a firm that permits representatives to use a "senior designation." For purposes of the Coordinated Exam, a senior designation was defined as any title or designation that conveys or suggests an expertise in senior investments or retirement planning. Of the firms that permit the use of senior designations, almost 48 percent of the exams were of firms that do not maintain a list of approved senior designations. Moreover, 25 percent of the exams where the broker-dealer allows the use of senior designations without a list of approved designations found that the firm did not even have procedures related to the approval of senior designations.

Thirty-two states have enacted rules designed to curb the use of designations that may mislead senior investors into believing that an individual has relevant expertise. These rules only permit the use of such designations when issued by a properly accredited entity to professionals who have completed an established training program and who are subject to reasonable monitoring and discipline for engaging in unethical conduct.

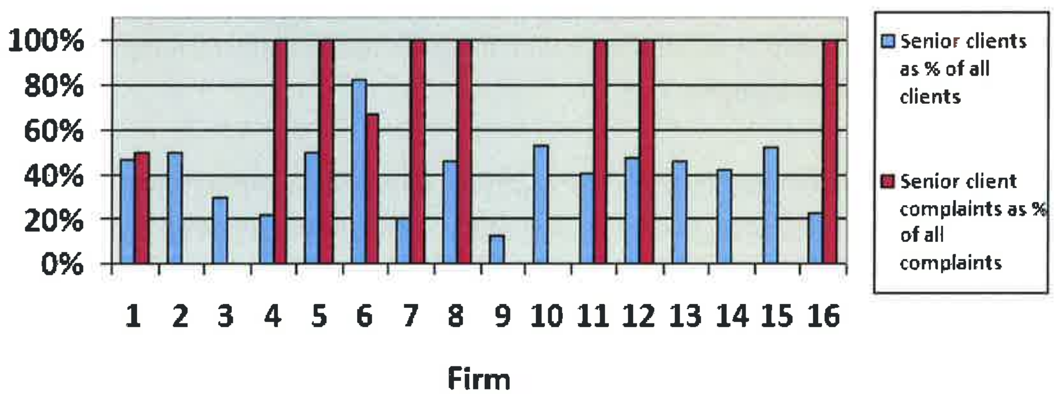
There are numerous designations used by financial service professionals that do not require sufficient, if any, demonstrated expertise or training on senior investor matters. Broker-dealers allowing the use of senior designations without appropriate controls and procedures are placing themselves and their senior clients at significant risk.

Complaints

While the focus of the Coordinated Exam was not enforcement-related, examiners observed an interesting trend in complaints that is worthy of mention. Examiners collected data on complaints related to the examined offices and filed within the prior 24 months. Overall, complaints filed by senior clients were found in approximately 15 percent of the offices examined.



More interesting is the fact that, over the relevant 24 month period at most offices where *any* complaint had been filed, the majority had been filed by senior clients.



Notably, in nearly 50 percent of offices with complaints, the relative frequency of senior client complaints was much higher than the percentage of the overall client base made up of senior clients. That is, the rate of complaints filed by senior clients is disproportionately high. Broker-dealers and regulators should continue their zealous efforts to effect change that will better educate financial service professionals and the investing public about suitability issues specific to senior investors.

Conclusion

NASAA and its members remain committed to advancing protections for senior investors. The Coordinated Exam is just one of the many efforts being undertaken currently by NASAA, the SEC, FINRA, and the industry. All of these efforts serve a shared objective—raising awareness of the issues affecting senior investors and fostering helpful changes in practices at firms and regulatory agencies.

The preliminary findings of the Coordinated Exam indicate that numerous broker-dealers are taking valuable steps such as designating personnel to focus on senior investor matters and developing procedures that are mindful of the common issues facing senior clients. Similarly, a majority of the exams involved a firm that has not only developed senior investor-specific training but has also mandated such training. It is also encouraging that examined broker-dealers are utilizing improved communication methods and are implementing age-related controls on certain investments.

However, these preliminary findings also identified areas where improvement appears needed. For example, it is concerning that 20 percent of the examinations involved firms that did not have written procedures on any of the areas previously highlighted by regulators. And while some firms are already using trusted contact forms, there is a need to enhance the methods and communications around collecting trusted contact information from senior clients to increase the rate at which such information is submitted. Senior investor complaints outpace the rate at which other clients filed complaints at the examined firms. In addition to the general relevance of this finding, it should serve to remind firms that improved communications with senior clients, and documentation of those communications, will not only serve these clients but will also serve an important risk-management purpose.

In sum, the preliminary findings from the Coordinated Exam indicate that past efforts to highlight senior investor matters have been successful at effecting change, but continued progress is necessary to best serve our aging population.

Regulatory Notice 16-29

Gifts, Gratuities and Non-Cash Compensation Rules

FINRA Requests Comment on Proposed Amendments to Its Gifts, Gratuities and Non-Cash Compensation Rules

Comment Period Expires: September 23, 2016

Executive Summary

FINRA is seeking comment on proposed amendments to FINRA Rule 3220 (Influencing or Rewarding Employees of Others), as well as on proposed FINRA Rule 3221 (Restrictions on Non-Cash Compensation), and proposed FINRA Rule 3222 (Business Entertainment).

The proposed rule text is available in Attachment A.

Questions concerning this *Notice* should be directed to:

- Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104; or
- Joseph Savage, Vice President and Counsel, Regulatory Policy, at (240) 386-4534.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by September 23, 2016.

Comments must be submitted through one of the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

  Marcia E. Asquith
  Office of the Corporate Secretary
  FINRA
  1735 K Street, NW
  Washington, DC 20006-1506

August 2016

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Investment Companies
- Legal
- Registered Representatives
- Senior Management
- Variable Contracts

Key Topics

- Business Entertainment
- Commercial Bribery
- Gifts
- Gratuities
- Non-Cash Compensation

Referenced Rules & Notices

- FINRA Rule 2310
- FINRA Rule 2320
- FINRA Rule 3220
- FINRA Rule 3221
- FINRA Rule 3222
- FINRA Rule 5110
- NASD Rule 2830
- Notice to Members 06-69

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

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.[1]

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).[2]

Background & Discussion

In April 2014, FINRA launched a retrospective review of its gifts, gratuities and non-cash compensation rules to assess their effectiveness and efficiency. In December 2014, FINRA published a report on its review.[3] The report concluded that while the rules have met their intended investor protection objectives, they could benefit from some updating to better align the investor protection benefits and the economic impacts. To that end, FINRA recommended exploring a combination of proposed rule amendments and guidance.

As discussed further below, FINRA is proposing amendments to the gifts, gratuities and non-cash compensation rules to, among other things: (1) consolidate the rules under a single rule series in the FINRA rulebook; (2) increase the gift limit from $100 to $175 per person per year and include a *de minimis* threshold below which firms would not have to keep records of gifts given or received; (3) amend the non-cash compensation rules to cover all securities products, rather than only direct participation programs (DPPs), variable insurance contracts, investment company securities and public offerings of securities; and (4) incorporate existing guidance and interpretive letters into the rules.

In addition, FINRA is proposing a revised approach to internal sales contests for non-cash compensation such that if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on the total production with respect to all securities products; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities.

Finally, FINRA is proposing to incorporate into the amended rules a principles-based standard for business entertainment that would require firms to adopt written policies and supervisory procedures for business entertainment.

Proposed Rule Amendments

A. Gifts

FINRA Rule 3220 (Influencing or Rewarding Employees of Others)[4] (the Gifts Rule) prohibits any member or person associated with a member, directly or indirectly, from giving anything of value in excess of $100 per year to any person where such payment is in relation to the business of the recipient's employer. The rule also requires members to keep separate records regarding gifts and gratuities.[5] The rule seeks both to avoid improprieties that may arise when a member firm or its associated persons give anything of value to an employee of a customer or counterparty and to preserve an employee's duty to act in the best interests of that customer.

1. *$100 Gift Limit*

FINRA proposes to increase the gift limit from $100 to $175 per person per year.[6] FINRA believes that an increase in the gift limit to $175 is appropriate because it takes into account the rate of inflation since adoption of the $100 gift limit.[7]

2. *Incorporation of Existing Guidance and Interpretive Positions*

In 2006, FINRA issued *Notice to Members (NTM) 06-69* addressing gifts and business entertainment to clarify the gifts that are subject to the Gifts Rule; that members must aggregate all gifts given by the firm and its associated persons to a particular recipient over the course of a year; the manner by which to value gifts; and the supervision and recordkeeping requirements for gifts.[8] In addition, over the years, in response to inquiries regarding the Gifts Rule, the staff has issued various interpretive letters, including a letter regarding the application of the Gifts Rule to bereavement gifts.[9]

FINRA proposes to incorporate, without material change, the guidance in *NTM 06-69* as well as its interpretation regarding the application of the Gifts Rule to bereavement gifts into FINRA Rule 3220 as Supplementary Material. Thus, the Supplementary Material would provide that: (1) there is no express exclusion from the Gifts Rule for gifts given during the course of business entertainment, unless the gift is of *de minimis* value, or a promotional or commemorative item; (2) gifts must be valued at the higher of cost or market value;[10] (3) members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year; (4) bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the recipient and, therefore, are not subject to the restrictions of the Gifts Rule or its recordkeeping requirements; (5) gifts given for infrequent life events (*e.g.*, a wedding gift or congratulatory gift for the birth of a child) are not subject to the restrictions of the Gifts Rule or its recordkeeping requirements provided the gifts are customary and reasonable, personal in nature and not in relation to the business of the employer of the recipient; and

(6) gifts of a *de minimis* value, promotional items of nominal value and commemorative items are not subject to the restrictions of the Gifts Rule or its recordkeeping requirements provided they meet the conditions specified in the Supplementary Material.[11] In addition, FINRA proposes to incorporate into the Supplementary Material to FINRA Rule 3220 the guidance in *NTM 06-69* regarding supervision and recordkeeping requirements for gifts.

B. Restrictions on Non-Cash Compensation

FINRA and NASD rules generally prohibit members and their associated persons from directly or indirectly accepting or making payments or offers of non-cash compensation in connection with the sale of variable insurance contracts,[12] investment company securities,[13] DPPs[14] and the public offerings of debt and equity securities.[15] These prohibitions are subject to specified exceptions that permit:

- gifts that do not exceed an annual amount per person fixed by the FINRA Board of Governors (currently $100) and are not preconditioned on achievement of a sales target;
- an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target;
- payment or reimbursement by "offerors" (product issuers, advisers, underwriters and their affiliates) in connection with training or education meetings, subject to specified conditions, including meeting location restrictions and not preconditioning attendance on achievement of a sales target; and
- internal firm non-cash compensation arrangements that are based on total production and equal weighting of product sales.[16]

1. *Proposed FINRA Rule 3221*

   a. Application to Any Security

FINRA believes that the general prohibitions regarding the payment or receipt of non-cash compensation should be extended beyond investment company securities, variable insurance contracts, DPPs and public offerings of securities as the conflicts underlying these prohibitions exist with respect to all securities. Accordingly, FINRA proposes to eliminate the existing non-cash compensation rules and replace them with proposed FINRA Rule 3221, which would apply to the payment or receipt of non-cash compensation in connection with the sale of any security. Specifically, proposed FINRA Rule 3221(b) would provide that "No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation in connection with the sale of securities." This prohibition would be subject to the exceptions discussed below.

b. Exceptions to the Prohibition on Non-Cash Compensation Arrangements

i. Gifts From Offerors

Consistent with the existing non-cash compensation rules, the proposal would except from the prohibitions on non-cash compensation arrangements gifts from offerors[17] that do not exceed a specified threshold per individual per year and are not preconditioned on the achievement of a sales target.

The proposal would define the term "preconditioned on the achievement of a sales target" as describing a non-cash compensation arrangement in which an offeror or member communicates in advance that an associated person will receive non-cash compensation only if the associated person achieves either a dollar-denominated goal for selling securities or a goal of finishing within a defined number of top sellers of securities.[18] As with the dollar threshold under the proposed amendments to the Gifts Rule, FINRA proposes to limit the gifts exception under proposed FINRA Rule 3221 to $175.

ii. Training or Education Meetings

The proposal would permit an offeror to make payments or reimbursements of associated persons' expenses in connection with a training or education meeting held by an offeror or a member, provided that the meeting meets the following conditions:

- Associated persons must obtain the member's prior approval to attend the meeting and attendance, as well as the payment or reimbursement by the offeror, must not be preconditioned on the achievement of a sales target.
- The location must be appropriate to the purpose of the meeting. The proposal would establish appropriate locations to be a U.S. office of the offeror or member holding the meeting, a facility located in the vicinity of such office, a U.S. regional location with respect to meetings of associated persons who work within that region or, with respect to meetings dealing with DPPs or real estate investment trusts (REITs), a U.S. location at which a significant or representative asset of the program or REIT is located.
- Payment or reimbursement by the offeror must apply only to the training, education, meals, lodging and transportation for associated persons. The proposed rule would make clear that the offeror could not pay or provide reimbursement for the entertainment or expenses of guests of associated persons or for the entertainment of associated persons.
- FINRA believes that the conditions relating to training or education meetings are largely consistent with the restrictions relating to such meetings in the existing non-cash compensation rules as well as staff interpretations relating to those rules.[19]

iii. Internal Sales Contests

The existing non-cash compensation rules permit non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that: (1) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities or investment company securities, is based on the total production of associated persons with respect to all variable contract securities or investment company securities, as applicable, distributed by the member; (2) the non-cash compensation arrangement requires that the credit received for each variable contract security or investment company security, as applicable, is equally weighted; (3) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and (4) the recordkeeping requirement relating to member compensation is satisfied.[20]

FINRA proposes to continue to permit non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member if payment or reimbursement of expenses associated with the non-cash compensation arrangement is not preconditioned on achievement of a sales target. If payment or reimbursement is preconditioned on achievement of a sales target, the non-cash compensation arrangement must: (1) be based on the total production of associated persons with respect to all securities distributed by the member; and (2) not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities. In addition, no unaffiliated non-member company or other unaffiliated member may directly or indirectly participate in the member's or non-member's organization of a permissible non-cash compensation arrangement.[21]

Thus, the proposal would permit members to continue to pay non-cash compensation to their associated persons outside the context of an internal sales contest. For example, this provision would permit a member to send its associated persons to an internal training meeting that is not tied to achievement of a sales target. The meeting would not have to meet the same requirements as a training or education meeting sponsored by a third-party offeror, but no unaffiliated entity could participate in the organization of these types of arrangements.

Unlike the existing non-cash compensation rules, however, the proposal would not permit product-specific internal sales contests. FINRA believes that internal sales contests that favor one security (*e.g.*, a proprietary investment company) or one type of security (*e.g.*, investment companies or stocks) potentially create an incentive to engage in sales conduct contrary to the best interests of customers. Consequently, "stock of the day" and similar promotions would be impermissible under the proposal.

Although the proposed rule change relating to internal sales contests is a significant substantive change to the existing rules, FINRA's impression is that product-specific internal sales contests for non-cash compensation are not widely used today. Moreover, to the extent that firms engage in internal sales contests, FINRA believes that requiring payment or reimbursement to be based on the total production of associated persons with respect to all securities distributed by the member and not be based on conditions that would encourage an associated person to recommend particular securities or categories of securities would reduce the potential for conflicts of interest and risk of abuse.

c. Incorporation of Existing Guidance and Interpretive Positions

FINRA proposes to incorporate into proposed FINRA Rule 3221 as Supplementary Material language similar to the language discussed above in connection with the proposed Supplementary Material to the Gifts Rule. Thus, the Supplementary Material would provide that: (1) there is no express exclusion from the restrictions in the non-cash compensation rule for gifts given during the course of business entertainment, unless the gift is of a *de minimis* value, or a promotional or commemorative item; (2) gifts must be valued at the higher of cost or market value;[22] (3) members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year; (4) gifts given for infrequent life events (*e.g.*, a wedding gift or congratulatory gift for the birth of a child) are not subject to the restrictions of the non-cash compensation rule or its recordkeeping requirements provided the gifts are customary and reasonable and personal in nature; and (5) gifts of a *de minimis* value, promotional items of nominal value and commemorative items are not subject to the restrictions of the non-cash compensation rule provided they meet the conditions specified in the Supplementary Material.[23]

In addition, FINRA proposes to incorporate into the Supplementary Material prior guidance it has provided regarding training or education meetings. Specifically, the Supplementary Material would provide that the proposed rule's training or education exception "must first and foremost be intended to provide training or education to an associated person. Any training must occupy substantially all of the work day. Payment or reimbursement for any related meals, lodging and transportation is permissible, but reimbursement or payment for outings (*e.g.*, golf outings), tours, or other forms of entertainment while at the location for the purpose of training or education is impermissible."[24]

d. Recordkeeping

The proposal would require a member to retain records of all non-cash compensation provided or received by the member or its associated persons for arrangements permitted under the proposed rule. The records must include: the names of the offerors, non-members or other members making the non-cash compensation contribution; the names of associated persons receiving the non-cash compensation under the arrangements; the nature and value of non-cash compensation provided or received; the location of training or education meetings; and any other information that evidences compliance by the member and its associated persons with the rule.

The proposed recordkeeping requirements differ from the existing non-cash compensation rules' recordkeeping requirements in that the proposal would require members to retain records of non-cash compensation provided or received by a member or its associated person. The existing non-cash compensation rules require members to maintain records of non-cash compensation received by a member or its associated persons. FINRA believes it would be important for members to retain records of non-cash compensation provided and received to help ensure that members comply with the provisions of the non-cash compensation rule.

C. Business Entertainment

In 1999, FINRA staff issued an interpretive letter stating that the Gifts Rule does not prohibit "ordinary and usual business entertainment" (such as an occasional meal, sporting event, theater production or comparable entertainment event) provided that the entertainment "is neither so frequent nor so extensive as to raise any question of propriety."[25] The 1999 letter noted that the interpretation was based, in part, on FINRA's rules governing non-cash compensation in connection with the offer and sale of investment company shares and variable annuities.

FINRA proposes to replace the business entertainment standard in the existing non-cash compensation rules and 1999 letter with proposed FINRA Rule 3222, which would require each member to adopt written policies and supervisory procedures relating to business entertainment tailored to its business needs.[26] The proposed rule would explicitly address the content of those policies and procedures and would incorporate elements of the business entertainment standard in the existing non-cash compensation rules and the 1999 letter. Specifically, proposed FINRA Rule 3222 would require that each member's written policies and supervisory procedures: (1) are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived as intended as, an improper *quid pro quo*; (2) define forms of permissible and impermissible business entertainment based on the location, nature, frequency and dollar amount of the business entertainment provided, as well as the type and dollar amount of any accommodations or transportation provided in connection with such business entertainment;[27] (3) require that the offeror, member or one or more of the member's associated persons hosts the business entertainment; (4) specify that the business entertainment must not be preconditioned on the achievement of a sales target; and (5) require appropriate training and education of all personnel who supervise, administer or are subject to the written policies and supervisory procedures.

In addition, the proposed rule change would require that each member's written policies and supervisory procedures must require the maintenance of detailed records of business entertainment expenses, including the names of all persons providing and receiving business entertainment, the location, nature, frequency and dollar amount of the business entertainment, and the type and dollar amount of any accommodations or transportation provided.

Economic Impact Assessment

Regulatory Need

The assessment phase of FINRA's retrospective review of the gifts, gratuities and non-cash compensation rules concluded that these rules have been largely effective in meeting their intended investor protection objectives, but there are certain areas where the investor protection benefits may not align with the associated economic costs. For example, the views expressed by the stakeholders during the assessment suggested that a $100 gift limit is too low and that raising the limit would not undermine the purposes of the gifts and non-cash compensation rules. Stakeholders also raised concerns that the gifts, gratuities and non-cash compensation rules are scattered throughout the FINRA rulebook causing difficulties from a reference and compliance standpoint.

The amendments in this rule proposal are intended to address these current limitations and better align the investor protection benefits and the economic impacts.

Economic Impacts

The proposed amendments would directly impact member firms that regularly engage in gift giving and non-cash compensation arrangements. The proposed consolidation of the rules under a single rule series in the FINRA rulebook should simplify the supervisory efforts and could potentially lead to better use of compliance resources elsewhere within the firms. The increase in the gift limit from $100 to $175 per person per year reflects the rate of inflation since adoption of the $100 gift limit, and addresses the increase in not only the prices of goods, but also the shipping costs, taxes and other expenses. Furthermore, the inclusion of a *de minimis* threshold below which firms would not have to keep records of gifts given or received, and the exception regarding gifts related to specified life events—such as bereavement and wedding gifts, or gifts for the birth of a child—should reduce the costs associated with tracking and supervising such instances.

The proposal extends the general prohibitions regarding the payment or receipt of non-cash compensation in connection with the sale of investment company securities, variable insurance products, DPPs and public offerings of securities to the sale of all securities products. As mentioned above, such prohibitions on the payment or receipt of non-cash compensation are covered in several FINRA rules,[28] so only firm activities that fall outside the scope of the current rules would be impacted by the proposed extension. FINRA identified that a potential area that would be impacted is private placements of securities. Between December 2012 and March 2016, there were 6,702 private placements facilitated by 750 FINRA member firms. While FINRA understands that, due to the nature of the private placements, accepting or making payments or offers of non-cash compensation is not a common industry practice, there may still be instances where the proposed rule may potentially apply.

The proposal also requires member firms to adopt written policies and supervisory procedures to maintain detailed records of business entertainment expenses. Member firms that have no relevant policies and supervisory procedures in place must dedicate compliance resources to recording and tracking such expenses. In the past several years, FINRA's examination staff has found instances of poor recordkeeping of such expenses. Specifically, the firms' logs that were used to record gifts and business entertainment did not indicate the recipient of each employee's expenditures or its intended business purpose. Member firms are expected to benefit from the reinforcement of more effective recordkeeping requirements. Moreover, the proposed rule would establish a principles-based standard that would allow firms to tailor their written policies and supervisory procedures to meet their business needs and to take a risk-based approach, so that they can allocate compliance resources to more significant issues.

FINRA also considered the potential impacts of the proposed amendments on investors. FINRA believes the proposed prohibition of product-specific internal sales contests, which typically favor one security or one type of security, reduces the potential for sales of products that are not aligned with the best interests of customers.

Request for Comment

FINRA requests comment on all aspects of the proposed rules, including any potential costs and burdens of the proposed rules. FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible. FINRA particularly requests comment on the following questions:

1. The proposed amendments would increase the gift limit under FINRA Rule 3220 and proposed FINRA Rule 3221 to $175. What risks, if any, might arise to customers by raising the gift limit? Should FINRA increase the limit to $175? If not, what, if any, would be an appropriate limit?
2. The Gifts Rule applies to gifts a member firm or its associated persons give and not to gifts the member firm or its associated persons receive. Should the Gifts Rule apply to gifts received as well as gifts given?
3. The Gifts Rule does not apply to gifts a member firm gives to its own employees or from a member firm's employee to his or her individual retail clients or customers. Should the Gifts Rule apply to gifts a member firm gives to its own employees or from a member firm's employee to his or her individual retail clients or customers? Please explain.
4. FINRA is proposing a $50 *de minimis* threshold below which member firms would not have to keep records of gifts given or received. Is a $50 *de minimis* threshold appropriate? Should the threshold be higher or lower or should FINRA not include a *de minimis* threshold?

5. To what extent would FINRA's proposal to no longer allow product-specific internal sales contests for non-cash compensation impact member firms? In what ways, if any, could it potentially impact customers? Is FINRA's proposed approach to internal sales contests for non-cash compensation appropriate? Please explain.
6. Commenters have said that restricting entertainment at training sessions paid for by offerors is logically inconsistent with the rule's business entertainment approach. Should the requirements for training and education meetings allow entertainment that complies with the limitations on business entertainment provided by members?
7. Are the proposed recordkeeping requirements appropriately tailored to obtain information that would be relevant for purposes of monitoring for compliance with the proposed rules?
8. What are the estimated costs of drafting policies and procedures to comply with proposed Rule 3222 relating to business entertainment?
9. How would the consolidation of the rules governing gifts, gratuities and non-cash compensation in this proposal simplify compliance? What impact would it have on the costs of compliance?
10. What economic impact, if any, would be associated with the extension of the rules governing non-cash compensation to all securities?
11. Are there any expected economic impacts associated with the proposed rules not discussed in this *Notice*? What are they and what are the estimates of those impacts?

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from 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* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. *See Retrospective Rule Review Report: Gifts, Gratuities and Non-Cash Compensation* (December 2014).
4. In 2008, the SEC approved the transfer of NASD Rule 3060 into the Consolidated FINRA Rulebook without material change and renumbered the rule as FINRA Rule 3220.
5. *See* FINRA Rule 3220(c).
6. The current $100 gift limit has been in place since 1992, when the SEC approved an increase in the limit from $50 to $100. *See* Securities Exchange Act Release No. 31662 (December 28, 1992), 58 FR 370 (January 5, 1993) (Order Approving File No. SR-NASD-92-40). *See also* Securities Exchange Act Release No. 21074 (June 20, 1984), 49 FR 26330 (June 27, 1984) (Order Approving File No. SR-NASD-84-8) (increasing the gift limit from $25 to $50).
7. FINRA staff used the annual rate of inflation data for the United States from the Federal Reserve Bank of St. Louis website to estimate the change in consumer prices since 1992, when the SEC approved the increase in the limit from $50 to $100. The average rate of inflation over the 26 years is 2.34 percent and the compound increase in consumer prices over the period is 74.03 percent. Applying this increase to the $100 gift limit results in $174.03.
8. *See NTM 06-69* (December 2006).
9. *See* letter from Gary L. Goldsholle, Vice President & Associate General Counsel, FINRA, to Amal Aly, Managing Director & Associate General Counsel, SIFMA, dated December 17, 2007 ("Aly Letter"). In 1999, the staff issued an interpretive letter stating that the Gifts Rule does not prohibit "ordinary and usual business entertainment" provided that the entertainment "is neither so frequent nor so extensive as to raise any question of propriety." That letter is discussed in more detail below in connection with proposed FINRA Rule 3222.
10. Tickets to sporting or other events would be valued at the higher of cost or face value.
11. In *NTM 06-69*, the staff stated that for a promotional item to be considered of nominal value its value must be substantially below $100. In addition, the staff did not specify in *NTM 06-69* at what value it would consider a gift to be of *de minimis* value. Under the proposed rule change, FINRA proposes that gifts of *de minimis* value or promotional items of nominal value would not be subject to the restrictions of the Gifts Rule or its recordkeeping requirements provided that the value of the gift or promotional item is below $50. A firm or its associated persons may not engage in patterns of providing gifts or promotional items of less than $50 to circumvent the Gifts Rule's restrictions and recordkeeping requirements.

12. *See* FINRA Rule 2320(g)(4) (Variable Contracts of an Insurance Company).
13. *See* NASD Rule 2830(l)(5) (Investment Company Securities).
14. *See* FINRA Rule 2310(c) (Direct Participation Programs).
15. *See* FINRA Rule 5110(h) (Corporate Financing Rule – Underwriting Terms and Arrangements).
16. *See* NASD Rule 2830(l)(5) and FINRA Rule 2320(g)(4). FINRA Rules 5110 and 2310 do not require internal firm non-cash compensation arrangements in connection with public offerings of securities or direct participation programs to be based on total production and equal weighting of product sales.
17. The proposed definition of "offeror" is based on the current definitions of "offeror" in the existing non-cash compensation rules. Specifically, the proposal would define the term "offeror" to mean: "(A) with respect to the sale and distribution of variable contracts, an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; (B) with respect to the sale and distribution of investment company securities not sold through variable contracts, an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; and (C) with respect to the sale and distribution of any other type of security, an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities."
18. To fall within this definition, a communication may be either explicit or implicit. Thus, an arrangement normally would not be considered preconditioned on the achievement of a sales target if a member or an offeror designates persons to participate in the arrangement in recognition of past sales, without stating the goal in advance. If, however, after several events, the selection criteria of the member or offeror becomes reasonably apparent, there may have been an implicit communication of a goal, and any similar arrangement in the future might be deemed preconditioned on the achievement of a sales target.
19. *See, e.g.*, "Non-Cash Compensation – Training or Education Meetings," NASD Regulatory & Compliance Alert 13 (Summer 2000), (interpreting the training or education meeting exception in the existing non-cash compensation rules "as an event that is first and foremost intended to provide training or education to an associated person. Any training meeting should occupy substantially all of the work day."). FINRA subsequently published a letter reminding offerors that they may not pay for entertainment expenses of training or education meeting attendees. *See* letter from Mary L. Schapiro, President, NASD (March 7, 2001).
20. The total production and equal weighting requirements do not apply to arrangements involving DPPs or public offerings of securities.

21. Consistent with the existing non-cash compensation rules, the proposal would include a provision that would permit contributions by a non-member company or other member to a non-cash arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that it meets the requirements for such arrangements, including the total production standard.
22. As stated above, tickets to sporting or other events would be valued at the higher of cost or face value.
23. Consistent with the Gifts Rule, FINRA proposes a $50 *de minimis* threshold. In addition, the proposal would specify that gifts of *de minimis* value, promotional items of nominal value and commemorative items would not be subject to the proposed recordkeeping requirements relating to non-cash compensation arrangements.
24. *See supra* note 19.
25. *See* letter from R. Clark Hooper, Executive Vice President, NASD, to Henry H. Hopkins, Director, and Sarah McCafferty, Vice President, T. Rowe Price Investment Services, Inc., dated June 10, 1999 ("1999 letter").
26. FINRA proposes to include in Supplementary Material to proposed FINRA Rule 3222 language that makes clear that the purpose of the rule is to govern business entertainment provided by a member or its associated persons, as well as business entertainment accepted by a member or its associated persons from an offeror. In addition, the Supplementary Material would provide that business entertainment includes, but it not limited to, an occasional meal, a ticket to an event (*e.g.*, sporting event) or theater and other comparable entertainment.
27. FINRA notes that a principles-based, rather than prescriptive, approach to what is permissible and impermissible business entertainment would satisfy this requirement of proposed Rule 3222.
28. *See supra* notes 12-15.

ATTACHMENT A

Below is the text of the amendments. New language is underlined; deletions are in brackets.

* * * * *

3220. Influencing or Rewarding Employees of Others

(a) No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of [one hundred dollars] <u>$175</u> per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.

(b) This Rule shall not apply to contracts of employment with<u>,</u> or [to] compensation for services rendered by<u>,</u> persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

(c) <u>Subject to Supplementary Material .07, a</u>[A] separate record of all payments or gratuities under this Rule in any amount known to the member, the employment agreement referred to in paragraph (b) and any employment compensation paid as a result thereof<u>,</u> shall be retained by the member for the period specified by SEA Rule 17a-4.

<u>• • • Supplementary Material: ------------------</u>

<u>**.01 Gifts Incidental to Business Entertainment.** There is no express exclusion from the restrictions in paragraph (a) of this Rule for gifts given during the course of business entertainment, unless the gift is of de minimis value, or a promotional or commemorative item consistent with Supplementary Material .06.</u>

<u>**.02 Valuation of Gifts.** Gifts must be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other events, a member must use the higher of cost or face value. If gifts are given to multiple recipients, members must record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the $175 limit in paragraph (a) of this Rule.</u>

.03 Aggregation of Gifts. Members must aggregate all gifts given by the member and each associated person of the member to a particular recipient over the course of the year. In addition, each member must state in its procedures whether it is aggregating all gifts given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift to any particular recipient.

.04 Bereavement Gifts. Bereavement gifts that are customary and reasonable are not considered to be in relation to the business of the employer of the recipient and, therefore, are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule.

.05 Personal Gifts. Gifts that are given for infrequent life events (*e.g.*, a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (a) of this Rule or the recordkeeping requirements in paragraph (c) of this Rule, provided the gifts are customary and reasonable, personal in nature and not in relation to the business of the employer of the recipient. In determining whether a gift is "personal in nature and not in relation to the business of the employer of the recipient," members should consider a number of factors, including the nature of any pre-existing personal or family relationship between the person giving the gift and the recipient and whether the associated person paid for the gift. When the member bears the cost of the gift, either directly or by reimbursing an associated person, FINRA presumes that such gift is not personal in nature and instead is in relation to the business of the employer of the recipient.

.06 De Minimis Gifts and Promotional or Commemorative Items. (a) Gifts of a de minimis value (e.g., pens, notepads or modest desk ornaments) or promotional items of nominal value that display the member's logo (*e.g.*, umbrellas, tote bags or shirts) are not subject to the restrictions in paragraph (a) of this Rule provided that the value of the gift or promotional item is below $50. (b) Customary Lucite stones, plaques or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (a) of this Rule. The restrictions of this Rule shall apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction.

.07 Supervision and Recordkeeping. Paragraph (c) of this Rule requires a separate record of payments and gratuities. Rule 3110 requires a member to have a supervisory system reasonably designed to achieve compliance with Rule 3220. To meet these standards, members are required to have systems and procedures reasonably designed to ensure that payments and gratuities in relation to the business of the employer of the recipient given by the member and its associated persons to employees of clients of the member are: (i) reported to the member; (ii) reviewed for compliance with this Rule; and (iii) maintained in the member's records. Such procedures must include provisions reasonably designed to ensure that supervisory personnel, other than the associated person who gives or is permitted to give a payment or gratuity, determines whether such payment or gratuity is personal in nature rather than in relation to the business of the recipient's employer. Gifts of *de minimis* value or nominal promotional or commemorative items consistent with Supplementary Material .06 are not subject to the recordkeeping requirements of paragraph (c) of this Rule.

3221. Restrictions on Non-Cash Compensation

(a) Definitions

(1) "Affiliated Member" shall mean a member that, directly or indirectly, controls, is controlled by or is under common control with a non-member company.

(2) "Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of securities.

(3) "Non-cash compensation" shall mean any form of compensation that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(4) "Offeror" shall mean:

(A) with respect to the sale and distribution of variable contracts, an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities;

(B) with respect to the sale and distribution of investment company securities not sold through variable contracts, an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; and

(C) with respect to the sale and distribution of any other type of security, an issuer, a sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

(5) "Preconditioned on the achievement of a sales target" shall describe a non-cash compensation arrangement in which an offeror or member communicates in advance that an associated person will receive non-cash compensation only if the associated person achieves either a dollar-denominated goal for selling securities or a goal of finishing within a defined number of top sellers of securities.

(b) Non-Cash Compensation Arrangements

No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation in connection with the sale of securities, except the following:

(1) Gifts from offerors that do not exceed $175 per individual per year and are not preconditioned on the achievement of a sales target.

(2) Payment or reimbursement by an offeror in connection with a meeting held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(A) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned on the achievement of a sales target;

(B) the location is appropriate to the purpose of the meeting, which shall mean a United States office of the offeror or the member holding the meeting, or a facility located in the vicinity of such office, or a United States regional location with respect to meetings of associated persons who work within that region or, with respect to meetings dealing with direct participation programs or real estate investment trusts, a United States location at which a significant or representative asset of the program or real estate investment trust is located;

(C) the payment or reimbursement applies only to training, education, meals, lodging and transportation for associated persons and is not applied to the entertainment or expenses of guests of associated persons or to the entertainment of associated persons; and

(D) the payment or reimbursement by the offeror is not preconditioned on the achievement of a sales target.

(3) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an Affiliated Member, provided that:

(A) (i) payment or reimbursement of expenses associated with the non-cash compensation arrangement is not preconditioned on the achievement of a sales target; or

(ii) if payment or reimbursement of expenses associated with the non-cash compensation arrangement is preconditioned on the achievement of a sales target, the non-cash compensation arrangement is:

(a) based on the total production of associated persons with respect to all securities distributed by the member; and

(b) not based on conditions that would encourage an associated person to recommend particular securities or categories of securities; and

(B) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement.

(4) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that the arrangement meets the criteria in paragraph (b)(3).

(c) Recordkeeping

A member shall retain records of all non-cash compensation provided or received by the member or its associated persons for arrangements permitted by paragraph (b) for the period specified by SEA Rule 17a-4. The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contribution; the names of associated persons receiving the non-cash compensation under the arrangements; the nature and value of non-cash compensation provided or received; the location of training or education meetings; and any other information that evidences compliance by the member and its associated persons with paragraph (b).

• • • Supplementary Material: ------------------

.01 Gifts Incidental to Business Entertainment. There is no express exclusion from the restrictions in paragraph (b) of this Rule for gifts given during the course of business entertainment, unless the gift is of *de minimis* value, or a promotional or commemorative item consistent with Supplementary Material .05.

.02 Valuation of Gifts. Gifts must be valued at the higher of cost or market value, exclusive of tax and delivery charges. When valuing tickets for sporting or other events, a member must use the higher of cost or face value. If gifts are given to multiple recipients, members must record the names of each recipient and calculate and record the value of the gift on a pro rata per recipient basis, for purposes of ensuring compliance with the $175 limit in paragraph (b) of this Rule.

.03 Aggregation of Gifts. Members must aggregate all gifts received or given by the member and each associated person of the member over the course of the year for purposes of ensuring compliance with the $175 limit in paragraph (b) of this Rule. In addition, each member must state in its procedures whether it is aggregating all gifts received or given by the member and its associated persons on a calendar year, fiscal year, or on a rolling basis beginning with the first gift received or given.

.04 Personal Gifts. Gifts that are given for infrequent life events (*e.g.*, a wedding gift or a congratulatory gift for the birth of a child) are not subject to the restrictions in paragraph (b), or the recordkeeping requirements of paragraph (c), of this Rule provided the gifts are customary and reasonable and personal in nature.

.05 De Minimis Gifts and Promotional or Commemorative Items. (a) Gifts of a de minimis value (e.g., pens, notepads or modest desk ornaments) or promotional items of nominal value that display the offeror's logo (*e.g.*, umbrellas, tote bags or shirts) are not subject to the restrictions in paragraph (b) of this Rule provided that the value of the gift or promotional item is below $50. (b) Customary Lucite stones, plaques or other similar solely decorative items commemorating a business transaction are not subject to the restrictions in paragraph (b) of this Rule. The restrictions of this Rule shall apply, however, where the item is not solely decorative, irrespective of whether the item was intended to commemorate a business transaction. Gifts of de minimis value or nominal promotional or commemorative items consistent with Supplementary Material .05 are not subject to the recordkeeping requirements of paragraph (c) of this Rule.

.06 Training or Education Meetings. The training or education exception in paragraph (b)(2) of this Rule must first and foremost be intended to provide training or education to an associated person. Any training must occupy substantially all of the work day. Payment or reimbursement for any related meals, lodging and transportation is permissible, but reimbursement or payment for outings (*e.g.,* golf outings), tours, or other forms of entertainment while at the location for the purpose of training or education is impermissible. In addition, there is no express exclusion from the restrictions in paragraph (b) of this Rule for gifts given during the course of training or education meetings, unless the gift is of de minimis value, or a promotional or commemorative item consistent with Supplementary Material .05.

3222. Business Entertainment

(a) Each member that engages in business entertainment must have written policies and supervisory procedures with respect to business entertainment that:

(1) Are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived as intended as, an improper quid pro quo;

(2) Define forms of permissible and impermissible business entertainment based on the location, nature, frequency and dollar amount of the business entertainment provided, as well as the type and dollar amount of any accommodations or transportation provided in connection with such business entertainment;

(3) Require that the offeror, member or one or more of the member's associated persons hosts the business entertainment;

(4) Specify that the business entertainment must not be pre-conditioned on the achievement of a sales target; and

(5) Require appropriate training and education of all personnel who supervise, administer or are subject to the written policies and supervisory procedures.

(b) Each member's written policies and supervisory procedures must require the maintenance of detailed records of business entertainment expenses, including the names of all persons providing and receiving the business entertainment, the location, nature, frequency and dollar amount of the business entertainment, and the type and dollar amount of any accommodations or transportation provided.

• • • **Supplementary Material: ------------------**

.01 Definitions. The terms "offeror" and "preconditioned on the achievement of a sales target" shall have the same meanings as in Rule 3221.

.02 Purpose. The purpose of Rule 3222 is to govern business entertainment provided by a member or its associated persons, as well as business entertainment accepted by a member or its associated persons from an offeror. Business entertainment includes, but is not limited to, an occasional meal, a ticket to an event (e.g., sporting event) or the theater and other comparable entertainment.

.03 Obligations of Persons Associated with a Member. Consistent with Rule 0140, persons associated with a member must comply with such member's written policies and supervisory procedures as established pursuant to this Rule 3222. In addition, consistent with Rule 0140, it shall be a violation of this Rule for an associated person to engage in the conduct to be prevented (i.e., business entertainment that is intended as, or could reasonably be perceived as intended as, an improper quid pro quo) through the establishment, maintenance and enforcement of the policies and procedures required by this Rule.

3223. Exemptions

Pursuant to the Rule 9600 Series, FINRA staff, for good cause shown after taking into consideration all relevant factors, may conditionally or unconditionally grant an exemption from any provision of the 3200 Series to the extent that such exemption is consistent with the purpose of the 3200 Series, the protection of investors, and the public interest.

NATIONAL EXAM PROGRAM
RISK ALERT

By the Office of Compliance Inspections and Examinations ("OCIE")[1]

Volume IV, Issue 4 **February 3, 2015**

This Risk Alert provides summary observations from OCIE's examinations of registered broker-dealers and investment advisers, conducted under the Cybersecurity Examination Initiative, announced April 15, 2014.

CYBERSECURITY EXAMINATION SWEEP SUMMARY

I. Introduction

OCIE's National Examination Program staff (the "Staff"), recently examined 57 registered broker-dealers and 49 registered investment advisers to better understand how broker-dealers and advisers address the legal, regulatory, and compliance issues associated with cybersecurity (the "Cybersecurity Examination Initiative" or the "Initiative").[2] The examined firms were selected to provide perspectives from a cross-section of the financial services industry and to assess various firms' vulnerability to cyber-attacks. Appendices A and B include breakdowns of the types of broker-dealers and advisers examined.

In the examinations, the staff collected and analyzed information from the selected firms relating to their practices for: identifying risks related to cybersecurity; establishing cybersecurity governance, including policies, procedures, and oversight processes; protecting firm networks and information; identifying and addressing risks associated with remote access to client information and funds transfer requests; identifying and addressing risks associated with vendors and other third parties; and detecting unauthorized activity. In addition to reviewing documents, the staff held interviews with key personnel at each firm regarding its: business and operations; detection and impact of cyber-attacks; preparedness for cyber-attacks; training and policies relevant to cybersecurity; and protocol for reporting cyber breaches.[3]

The staff's document reviews and questions were designed to discern basic distinctions among the level of preparedness of the examined firms. The staff conducted limited testing of the

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1 The views expressed herein are those of the staff of OCIE, in coordination with other staff of the Securities and Exchange Commission ("SEC" or "Commission"), including the Division of Trading and Markets and the Division of Investment Management. The Commission has expressed no view on the contents of this Risk Alert. This document was prepared by the SEC staff and is not legal advice.

2 *See* OCIE, "OCIE Cybersecurity Initiative" (April 15, 2014), available at: http://www.sec.gov/ocie/announcement/Cybersecurity-Risk-Alert--Appendix---4.15.14.pdf.

3 The Initiative's review period for broker-dealers covered calendar year 2013; adviser examinations, which began a few months after the broker-dealer examinations, reviewed firm practices in 2013 through April 2014.

accuracy of the responses and the extent to which firms' policies and procedures were implemented. The examinations did not include reviews of technical sufficiency of the firms' programs.

This Risk Alert provides summary observations from the examinations conducted under the Cybersecurity Examination Initiative.

II. Summary Examination Observations

- *The vast majority of examined broker-dealers (93%) and advisers (83%) have adopted written information security policies.* Most of the broker-dealers (89%) and the majority of the advisers (57%) conduct periodic audits to determine compliance with these information security policies and procedures.

    - *Written business continuity plans often address the impact of cyber-attacks or intrusions.* Such written policies and procedures, for both the broker-dealers (82%) and the advisers (51%), discuss mitigating the effects of a cybersecurity incident and/or outline the plan to recover from such an incident.

    - *Written policies and procedures generally do not address how firms determine whether they are responsible for client losses associated with cyber incidents.* The policies and procedures of only a small number of the broker-dealers (30%) and the advisers (13%) contain such provisions, and even fewer of the broker-dealers (15%) and the advisers (9%) offered security guarantees to protect their clients against cyber-related losses.

    - *Many firms are utilizing external standards and other resources to model their information security architecture and processes.* Most of the broker-dealers (88%) and many of the advisers (53%) reference published cybersecurity risk management standards, such as those published by the National Institute of Standards and Technology ("NIST"), the International Organization for Standardization ("ISO"), and the Federal Financial Institutions Examination Council ("FFIEC").

- *The vast majority of examined firms conduct periodic risk assessments, on a firm-wide basis, to identify cybersecurity threats, vulnerabilities, and potential business consequences.* These broker-dealers (93%) and advisers (79%) reported considering such risk assessments in establishing their cybersecurity policies and procedures.

    - *Fewer firms apply these requirements to their vendors.* A majority of the broker-dealers (84%) and approximately a third of the advisers (32%) require cybersecurity risk assessments of vendors with access to their firms' networks.

- *Most of the examined firms reported that they have been the subject of a cyber-related incident.* A majority of the broker-dealers (88%) and the advisers (74%) stated that they have experienced cyber-attacks directly or through one or more of their vendors. The majority of the cyber-related incidents are related to malware and fraudulent emails.

- Over half of the broker-dealers (54%) and just under half of the advisers (43%) reported receiving fraudulent emails seeking to transfer client funds. Over a quarter of those broker-dealers (26%) reported losses related to fraudulent emails of more than $5,000; however, no single loss exceeded $75,000. One adviser reported a loss in excess of $75,000 related to a fraudulent email, for which the client was made whole.

- One-quarter (25%) of the broker-dealers that had losses related to fraudulent emails noted that these losses were the result of employees not following the firms' identity authentication procedures. The one adviser that reported a loss also noted that its employees had deviated from its identity authentication procedures.

- Almost two-thirds of the broker-dealers (65%) that received fraudulent emails reported the emails to the Financial Crimes Enforcement Network (FinCEN) by filing a Suspicious Activity Report (SAR),[4] but only a small number of those firms reported the fraudulent emails to law enforcement or other regulatory agencies (7%). With the exception of the investment adviser loss in excess of $75,000 related to a fraudulent email noted above, advisers generally did not report incidents to a regulator or law enforcement.

- While firms identified misconduct by employees and other authorized users of the firms' networks as a significant concern, only a small proportion of the broker-dealers (11%) and the advisers (4%) reported incidents in which an employee or other authorized user engaged in misconduct resulting in the misappropriation of funds, securities, sensitive client, or firm information, or in damage to the firms' networks.

• *Many examined firms identify best practices through information-sharing networks.* Almost half of the broker-dealers (47%) were members of industry groups, associations, or organizations (both formal and informal) that exist for the purpose of sharing information regarding cybersecurity attacks and identifying effective controls to mitigate harm. Many of the broker-dealers identified the Financial Services Information Sharing

[4] *See* 31 C.F.R. § 1023.320(a)(2). Broker-dealers are obligated to report a transaction involving funds or other assets of at least $5,000 that is conducted or attempted by, at, or through the firm if the firm knows, suspects, or has reason to suspect, in part, that the transaction involves use of the broker-dealer to facilitate criminal activity. The scope of these particular exams did not include a review of the broker-dealers' compliance with this rule.

and Analysis Center ("FS-ISAC") as adding significant value in this effort. While a few of the advisers also identified FS-ISAC as a resource, advisers more frequently relied on discussions with industry peers, attendance at conferences, and independent research to identify cybersecurity practices relevant to their business and learn about latest guidance from regulators, government agencies, and industry groups.

- *The vast majority of examined firms report conducting firm-wide inventorying, cataloguing, or mapping of their technology resources.* Such practices were reportedly performed for the following devices, systems, and resources at the broker-dealers and advisers, respectively: physical devices and systems (96% and 92%); software platforms and applications (91% and 92%); network resources, connections, and data flows (97% and 81%); connections to firm networks from external sources (91% and 74%); hardware, data, and software (93% and 60%); and logging capabilities and practices (95% and 68%).

- *The examined firms' cybersecurity risk policies relating to vendors and business partners revealed varying findings.* Most of the broker-dealers incorporate requirements relating to cybersecurity risk into their contracts with vendors and business partners (72%). In contrast, few of the advisers incorporate such requirements (24%). Similarly, a slim majority of the broker-dealers maintain policies and procedures related to information security training for vendors and business partners authorized to access their networks (51%), whereas a much smaller number of the advisers have such policies (13%).

- *Almost all the examined broker-dealers (98%) and advisers (91%) make use of encryption in some form.*

- *Many examined firms provide their clients with suggestions for protecting their sensitive information.* Of the broker-dealers with retail customers that offer online access (65%), all firms (or their clearing firms or third-party vendors) provide their customers with some form of information about reducing cybersecurity risks in conducting transactions with the firm. Similarly, of the advisers that primarily advise retail clients and permit those clients to access their account information on-line (26%), the majority (75%) provide those clients with information about certain steps that can be taken to reduce cybersecurity risks when conducting business with the firm. The information may be directly addressed to clients on the advisers' website or in periodic email or postal distributions (*i.e.*, newsletters or bulletins).

- *The designation of a Chief Information Security Officer ("CISO") varied by the examined firms' business model.* Approximately two-thirds of the broker-dealers (68%) examined have an individual explicitly assigned as the firm's CISO. In contrast, less than a third of the advisers (30%) have designated a CISO; rather, the advisers often direct their Chief Technology Officer to take on the responsibilities typically performed by a CISO or they have assigned another senior officer (*i.e.*, the Chief Compliance Officer, Chief Executive Officer, or Chief Operating Officer) to liaise with a third-party consultant who is responsible for cybersecurity oversight.

- *Use of cybersecurity insurance revealed varying findings among the examined firms.* Over half of the broker-dealers maintain insurance for cybersecurity incidents (58%). In contrast, a small number of the advisers (21%) maintain insurance that covers losses and expenses attributable to cybersecurity incidents. Out of the broker-dealers and advisers, only one broker-dealer and one adviser reported that they had filed claims.

III. Conclusion

The staff is still reviewing the information to discern correlations between the examined firms' preparedness and controls and their size, complexity, or other characteristics. As noted in OCIE's 2015 priorities, OCIE will continue to focus on cybersecurity using risk-based examinations.[5]

The Staff welcomes comments and suggestions about how the Commission's examination program can better fulfill its mission to promote compliance, prevent fraud, monitor risk, and inform SEC policy. If you suspect or observe activity that may violate the federal securities laws or otherwise operates to harm investors, please notify us at http://www.sec.gov/complaint/info_tipscomplaint.shtml.

This Risk Alert is intended to highlight for firms risks and issues that the Staff has identified in the course of examinations of broker-dealers' and investment advisers' controls regarding cybersecurity and preparedness. In addition, this Risk Alert describes factors that firms may consider to (i) assess their supervisory, compliance and/or other risk management systems related to cybersecurity risks, and (ii) make any changes, as may be appropriate, to address or strengthen such systems. These factors are not exhaustive, nor will they constitute a safe harbor. Factors other than those described in this Risk Alert may be appropriate to consider, and some of the factors may not be applicable to a particular firm's business. While some of the factors discussed in this Risk Alert reflect existing regulatory requirements, they are not intended to alter such requirements. Moreover, future changes in laws or regulations may supersede some of the factors or issues raised here. The adequacy of supervisory, compliance and other risk management systems can be determined only with reference to the profile of each specific firm and other facts and circumstances.

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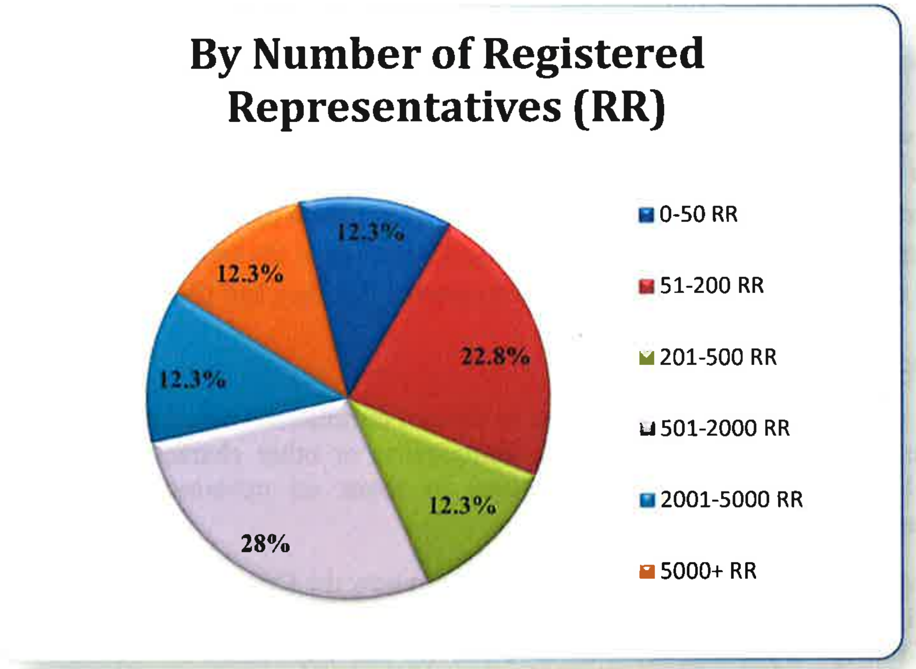
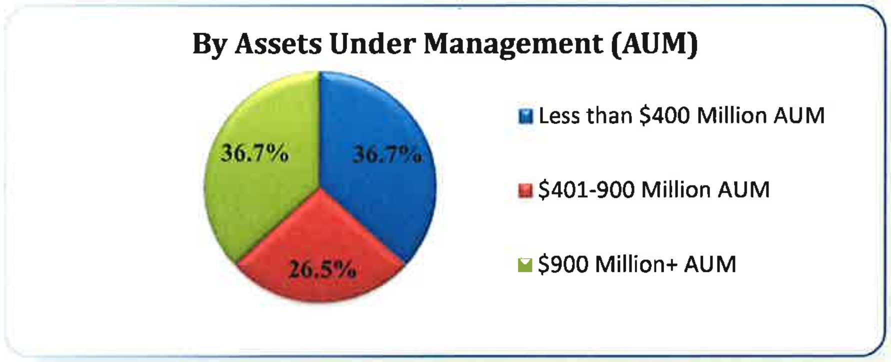
[5] OCIE, "Examination Priorities for 2015" (Jan. 13, 2015), *available at*: http://www.sec.gov/news/pressrelease/2015-3.html.

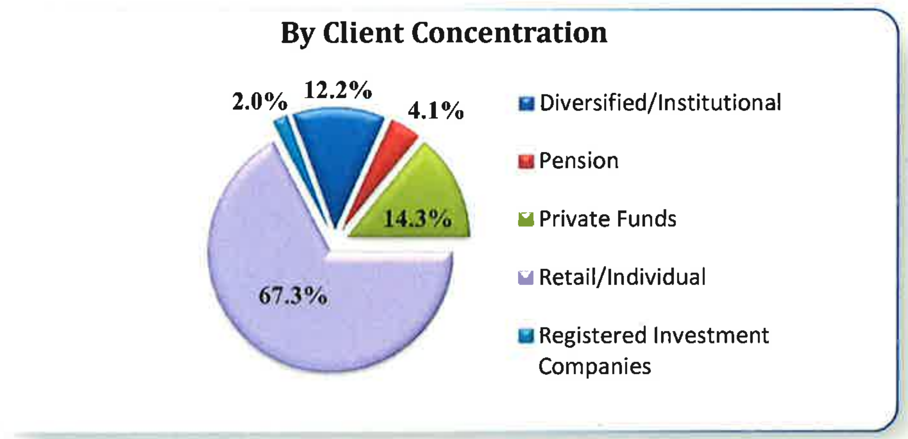
Appendix A – **Breakdown of Examined Broker-Dealers**[6]

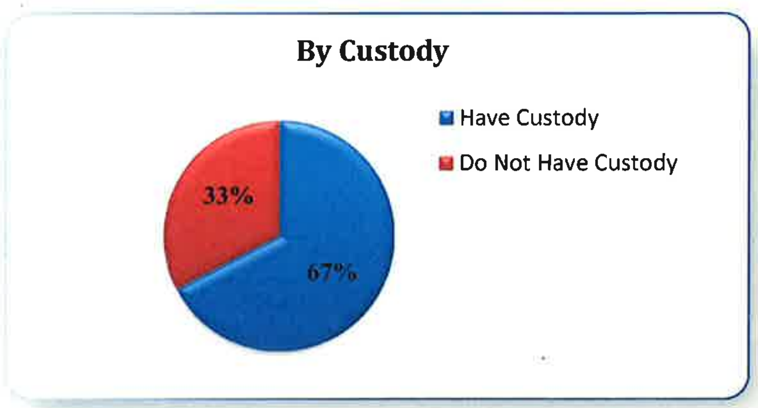


6 Figures in this Appendix are rounded approximations.

Appendix B – Breakdown of Examined Investment Advisers[7]







7 Figures in this Appendix are rounded approximations.

NASAA 2016
Enforcement Report

Based on 2015 Data

NASAA

Introduction

The North American Securities Administrators Association (NASAA) is an international association of all state, provincial and territorial securities regulators in the United States, Canada and Mexico. NASAA members have protected Main Street investors from fraud for more than 100 years.

Annually, NASAA conducts an enforcement survey of its U.S. members. It then analyzes the data and identifies trends. This year, 52 U.S. jurisdictions responded to the survey (Canadian NASAA members participate in a different enforcement survey; an overview is provided on page 6). The data, statistics and trends included in this report give a general overview of state enforcement efforts for the 2015 fiscal or calendar year.[1] Undoubtedly, however, this report undercounts many statistics since it does not include enforcement statistics from every jurisdiction on each survey question posed.

While securities markets are global, securities are sold locally by professionals who are licensed in every state where they conduct business. Our nation's unique complementary system of state, federal, and industry regulation helps to ensure fair markets for all investors. In enforcing our state securities laws, NASAA's U.S. members seek not only to sanction those who damage the integrity of our markets or cause harm to investors, but also to deter future financial misconduct. Credible deterrence involves several key elements: a strong legal framework with clear repercussions for misconduct; mechanisms and systems to detect and investigate misconduct; and decisive action and sanctions against those that violate the law.

Despite the hard work of NASAA's U.S. members and other regulators, securities fraud still poses a significant and real risk to investors. With interest rates expected to remain low – putting increased financial pressure on many Americans – the growing complexity of financial products and markets, and the increasing frequency of investment scams (many of which target our most vulnerable seniors), vigilance by regulators is essential. As this report demonstrates, NASAA members are well-prepared and equipped to meet this critical need and to aggressively protect the integrity of our markets and investors from fraud.

Sincerely,

Laura Posner
NASAA 2015-2016 Enforcement Section Chair
Chief, New Jersey Bureau of Securities
Office of the New Jersey Attorney General

2015-2016 NASAA Enforcement Section:
Joe Rotunda, Texas
Greg Strong, Delaware
Pat Ahern, Massachusetts
Jesse Devine, New York
Jason Roy, Manitoba

At a Glance:

More than $530 million in monetary relief obtained for investors.

More than 5,000 investigations conducted.

More than 2,000 enforcement actions brought.

More than 1,200 years of criminal relief obtained.

More than 3,000 license sanctions.

[1] *The survey requests that each NASAA U.S. member provide statistics using that member's most recent full reporting year. Some members collect and report data on a calendar basis, while other members collect and report data on a fiscal year basis. For this report, 34 responding members reported statistics from the 2015 calendar year, and 18 members reported statistics from the 2014-2015 fiscal year.*

2015 Results

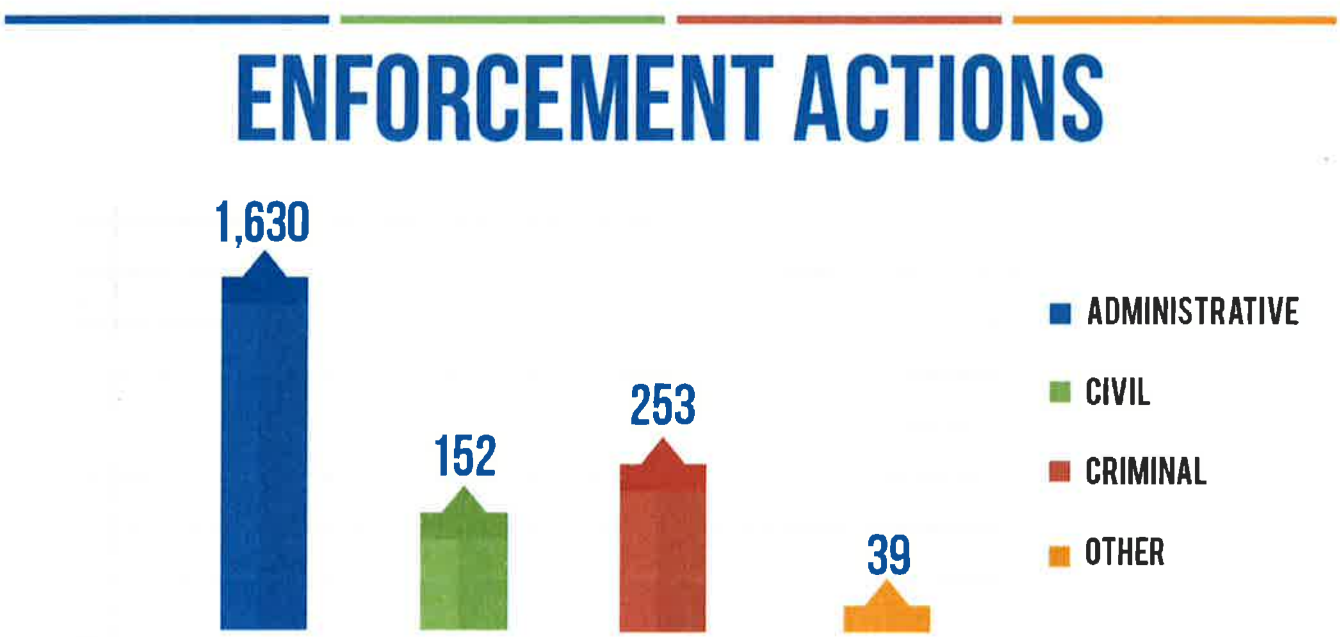
The vigorous, fair and effective enforcement of state securities laws through formal administrative, civil and criminal actions is a critical priority for NASAA members.

Investigations Conducted

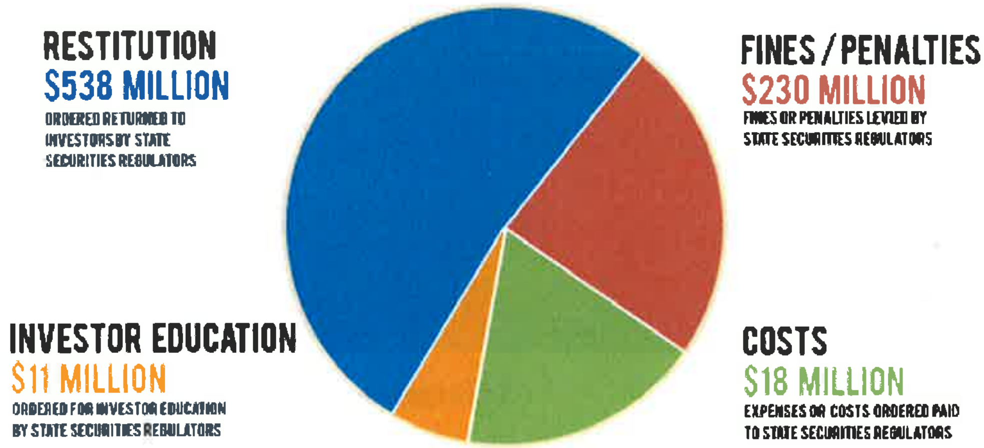
During 2015, state securities regulators conducted more than 5,000 investigations. These formal investigations are supplemented by extensive efforts to informally resolve complaints and referrals. Because investigations differ widely in their complexity and in the number of respondents and victims involved, the amount of time required to conduct an investigation can range from a few weeks to multiple years, with complex investigations often requiring a significant expenditure of both time and resources.

Enforcement Actions

Through NASAA's U.S. members' vigilance, in 2015, state securities regulators brought more than 2,000 enforcement actions against more than 2,700 respondents. As the charts that follow demonstrate, a single enforcement action often names several individuals and one or more companies as respondents. Large or complex cases can have numerous respondents.



MONETARY RELIEF OBTAINED

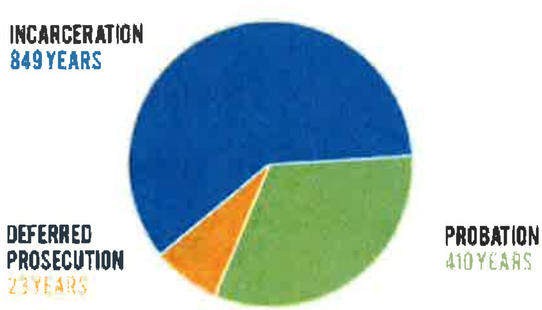


Relief Obtained

The sanctions imposed by NASAA's U.S. members for securities law violations range from bans on future activity or from trading in securities, to financial penalties and prison sentences. The sanctions imposed by state securities regulators can vary considerably from year-to-year, depending on the nature of the cases pursued.

As part of state securities regulators' continued focus on the investors in their jurisdictions, in 2015, NASAA's U.S. members ordered wrongdoers to return more than $530 million to aggrieved investors.[2] Additionally, NASAA's U.S. members levied fines or penalties of more than $230 million. In addition to restitution, disgorgement and fines or penalties, respondents also are often ordered by state securities regulators to pay part or all of the costs of the proceeding or for investor education initiatives. The states required that respondents pay almost $18 million in costs or expenses, and more than $11 million for investor education efforts in 2015.

CRIMINAL RELIEF OBTAINED



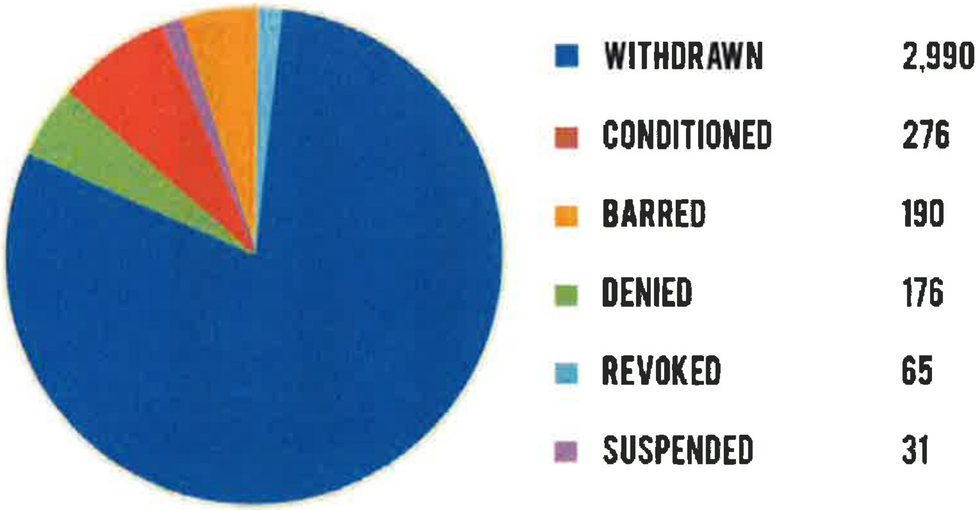
In addition to monetary sanctions, jurisdictions reported a continued high level of specific and general deterrence by imposing criminal sanctions. Collectively, in 2015, criminal defendants were sentenced to more than 1,200 years of incarceration, probation or deferred adjudication through the efforts of state securities regulators.

NASAA'S U.S. MEMBERS ORDERED WRONGDOERS TO RETURN MORE THAN $530 MILLION TO AGGRIEVED INVESTORS.

Importantly, state securities regulators also denied unscrupulous actors from operating in the securities industry and limited the activity of licensees/registrants. In 2015, more than 3,000 license/registration requests were withdrawn as a result of state action. While not all license/registration requests are withdrawn because a state regulator is about to take action to deny or limit the license/registration, many

[2] *This figure represents restitution reported by NASAA U.S. member jurisdictions. Not all jurisdictions provided a restitution amount. This figure does not account for unilateral and unreported returns to investors, or rescission offers by firms or investigative targets.*

LICENSE SANCTIONS



license/registration requests are withdrawn as a state is preparing to take action to deny, suspend, or revoke a license/registration.

In addition, more than 250 individuals had their licenses/registrations revoked or were barred from the industry, and more than 475 licenses/registrations were denied, suspended or conditioned as a result of state action.

Types of Products & Schemes

State securities regulators brought enforcement actions for a variety of different violations of state securities laws. While most state securities enforcement actions involve some sort of fraud, traditionally marked by material misrepresentations, false statements or a scheme designed to defraud or deceive investors, the form that fraud takes varies.

Most Reported Products & Schemes 2015

In order of frequency of investigations reported by states.

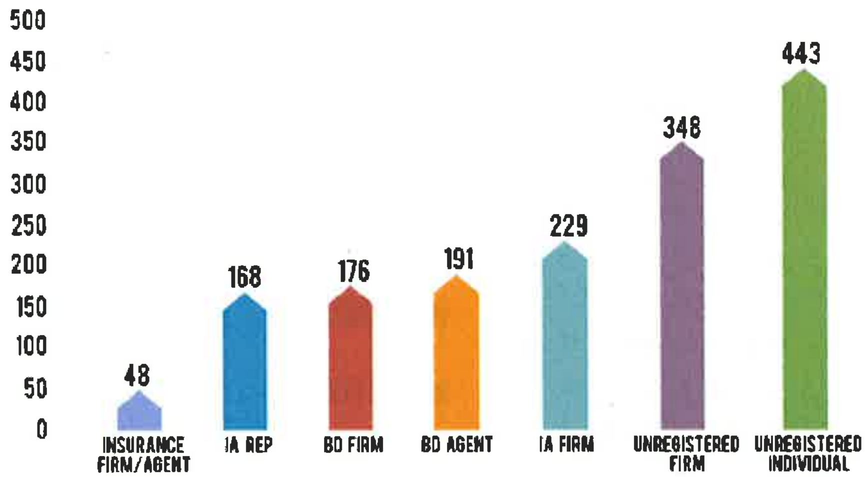
1. Ponzi Schemes
2. Real Estate Investment Program Fraud
3. Oil and Gas Investment Program Fraud
4. Internet Fraud
5. Affinity Fraud

In 2015, the most common fraudulent investment products involved real estate or oil and gas ventures. NASAA's U.S. members were particularly successful in bringing enforcement actions against violators selling these products in 2015. For example, Colorado secured an important District Court decision that makes clear that oil and gas interests are securities and subject to state securities laws.

In 2015, numerous state securities regulators settled enforcement actions brought against LPL Financial, LLC arising out of its sale of non-traded Real Estate Investment Trusts (REITs). The settlement required the firm to remediate losses for all non-traded REITs sold between January 1, 2008 and December 31, 2013 in violation of prospectus standards, state concentration limits, or the firm's own internal guidelines. LPL Financial, LLC, was also required to retain an independent third party to review and verify executed sales transactions during this period, which may include more than 2,000 sales, as well as to pay significant civil penalties to the states.

In addition to real estate and oil and gas investments, in 2015, state securities regulators continued to launch numerous investigations and enforcement actions involving variable and indexed annuities, hedge funds, life

TYPES OF RESPONDENTS



settlements/viaticals, and structured products, among others. Regardless of the product being sold or what the investment was in, the most common type of fraud cases remain Ponzi schemes.

VULNERABLE ADULTS, PRIMARILY SENIOR INVESTORS, WERE AGAIN TARGETED BY FRAUDSTERS DISPROPORTIONATLEY.

Reflecting a growing trend, in 2015, victims were often targeted through the internet, or as a result of being part of a specific race, religion, age bracket, profession, or other identifiable affinity group. Vulnerable adults, primarily senior investors, were again disproportionately targeted by fraudsters. In 2015, nearly one-third of all investigations conducted by states that reported senior specific information involved senior victims.

Looking forward, information reported by NASAA's U.S. members indicates that unscrupulous promoters may attempt to capitalize on strong real estate markets to continue to unlawfully sell promissory notes and other investments in real estate programs, as well as take advantage of fluctuations in the price of oil to continue to promote fraudulent investments in oil and gas drilling programs. In addition to these schemes and others reported in the top five, NASAA's U.S. members are warning the public against schemes involving private-placement transactions pursuant to Rule 506, where certain state securities laws are preempted by federal law.

Types of Respondents

A large percentage of the enforcement actions brought by NASAA's U.S. members in 2015 involved unregistered individuals and unregistered firms. However, for the first time since NASAA began conducting its annual enforcement survey, more registered individuals and firms were named as respondents than unregistered individuals and firms. In 2015, NASAA's U.S. members brought enforcement actions against 812 registered industry members, as compared with 791 unregistered individuals and firms.

The claims brought against registered members of the industry ran the gamut from fraud to books and records violations. Specifically, in 2015, there were 212 actions involving books and records violations; 70 actions involving suitability; 65 actions involving failure to supervise; and more than 200 actions involving other dishonest or unethical practices by registrants. Dozens of other actions involved unauthorized trading, churning, selling away and fraud.

MORE REGISTERED MEMBERS OF THE INDUSTRY WERE NAMED AS RESPONDENTS THAN UNREGISTERED MEMBERS FOR THE FIRST TIME SINCE NASAA BEGAN CONDUCTING ITS ENFORCEMENT SURVEY.

CANADIAN SECURITIES ADMINISTRATORS 2015 ENFORCEMENT REPORT SUMMARY

In early 2016, the Canadian Securities Administrators (CSA) released its 2015 Enforcement Report outlining how Canadian securities regulators actively are working to protect investors and the integrity of Canada's capital markets.

The CSA's 2015 Enforcement Report brings into focus the enforcement work done by CSA members against those who commit wrongdoing in Canada's capital markets. CSA members concluded cases against 350 individuals and companies.

The full report is on the CSA website (www.securities-administrators.ca) and on the websites of CSA members. The CSA, the council of securities regulators of Canada's provinces and territories, coordinates and harmonizes Canadian capital market regulation.

Highlights of the 2015 CSA Enforcement Report

Cases concluded against 184 respondents by contested hearings, 83 respondents by settlement agreement, and 83 respondents by court decision.

Concluded cased resulted in:

- Fines and administrative penalties of more than $138 million;
- Almost $112 million in restitution, compensation and disgorgement;
- Jail sentences totaling approximately 10 years handed down to 15 individuals;
- 108 cases commenced against a total of 165 individuals and 101 companies; and
- 35 freeze orders issued against a total of 84 individuals and companies, involving more than $13.5 million in assets in bank accounts.

2015 Case Highlights

NASAA's U.S. members conduct a wide range of investigations and enforcement actions, both individually and in cooperation with other NASAA members, and federal and international agencies. The enforcement matters discussed below – while only a small sample of NASAA's U.S. member efforts – highlight some persistent themes and significant areas of interest. These include classic Ponzi and pyramid schemes, frauds targeting seniors, and internet-related scams. In these cases, and through their ongoing enforcement work, NASAA's U.S. members protect investors, bring fraudsters to justice, and help obtain compensation for victim losses.

Ponzi Schemes

Ponzi schemes – fraudulent investment operations in which returns to early investors are paid out of funds from subsequent investors rather than legitimate profits – continue to be a common category of fraud. More than half of NASAA's U.S members reported Ponzi schemes as one of their top five types of securities fraud for the survey period.

LIKE MANY INVESTMENT SCAMS, NELSON'S PROMISSORY NOTES ADVERTISED IMPROBABLY HIGH RATES OF RETURN, RANGING FROM 10-TO-21 PERCENT.

Ponzi schemes frequently involve fictitious or failing business operations, as exemplified by the case of Derek Nelson, whose real-estate investment fraud was investigated by the Texas State Securities Board. Nelson, through various business entities, sold investors approximately $37 million in promissory notes. He told investors he would use the proceeds to buy distressed properties and renovate them for rent or sale. Instead, Nelson used at least $20 million of investors' money to prop up a Ponzi scheme, paying investors their promised returns with money from other investors. Nelson also used $2.7 million of investor funds to pay for personal expenses and to contribute to his church. Like many investment scams, Nelson's promissory notes advertised improbably high rates of return, ranging from 10-to-21 percent. As a result of his fraud, Nelson was recently sentenced to 19 years in prison.

In addition to pursuing Ponzi scheme operators, NASAA's U.S. members focus on institutions that enable these Ponzi schemes through failures of supervision and oversight. For example, in 2015, the Virginia State Corporation Commission's Division of Securities and Retail Franchising investigated the failure of two companies, Wells Fargo Advisors, LLC and Fulcrum Securities, LLC, to properly supervise their employee Christopher Cunningham, who defrauded elderly clients in a $1.2 million Ponzi scheme. Working closley with the U.S. Secret Service, the Division

> WELLS FARGO ADVISORS AND FULCRUM SECURITIES FAILED TO SUPERVISE CUNNINGHAM, ENFORCE THEIR OWN POLICIES AND PROCEDURES, AND PROPERLY REVIEW CUSTOMER ACCOUNTS.

of Securities found that Cunningham – who was subsequently permanently barred from the securities industry and sentenced to a 57-month federal prison term – solicited funds from investment clients based on false representations, including promises of guaranteed returns and statements that he was not being personally compensated in connection with the investments. In fact, Cunningham used investors' money to pay personal expenses and fund his unsuccessful private business venture, which purportedly designed and sold blast-proof materials to protect military troops. Virginia's parallel investigation of Wells Fargo Advisors and Fulcrum Securities concluded that both companies failed to supervise Cunningham, enforce their own policies and procedures, and properly review customer accounts. As a result of Virginia's investigation, investors will receive $470,000 in restitution.

Internet Fraud

The Internet has allowed bad actors operating virtually anywhere and with only basic computer skills to enter the homes of many Americans and take advantage of vulnerable investors.

For example, after an extensive investigation by the Florida Office of Financial Regulation (OFR), in 2015, Scott Campbell was sentenced to 20 years of imprisonment and 10 years of probation for his role in defrauding dozens of investors in a long-running internet investment fraud

> CAMPBELL OPERATED A "SWEETHEART" INVESTMENT SCHEME TARGETING SINGLE WOMEN WHITH WHOM HE HAD BECOME ACQUAINTED VIA ONLINE DATING SERVICES.

scheme. For more than 10 years, Campbell operated a "sweetheart" investment scheme targeting single women with whom he had become acquainted via online dating services. Campbell enticed more than 30 victims into investing in his purported musical recording and talent search business with promises that each would receive two percent of his company's future profits. The OFR investigation revealed, however, that Campbell spent most of the $1 million in funds collected from investors on gambling and personal living expenses.

Internet bulletin boards are another common venue fraudsters use to prey on vulnerable investors. For example, in 2015, the Alabama Securities Commission (ASC) investigated a long-running international prime bank scheme where investors were solicited through Craigslist with the promise of exaggerated returns and/or non-recourse loans that required no repayment. Investors typically wired their funds to various companies owned and/or operated by the subjects or to attorney escrow accounts with the promise of large returns and/or access to large loans. The investors never received what was promised, and their funds were disbursed among the subjects for non-investment purposes. To date, there have been 18 separate convictions, as many as 10 individuals are awaiting trial or are fugitives from justice, and Italian authorities – with the assistance of the ASC – have identified and arrested six individuals in Italy who participated in these online schemes internationally.

Gatekeeper Frauds

Intermediaries, or "gatekeepers," are supposed to provide important services that benefit investors – for instance, accountants who provide independent assurance that a company's financial condition is portrayed accurately, or lawyers who ensure that company representations are accurate and truthful. Unfortunately, NASAA's U.S. members often must take enforcement action against gatekeepers who abuse their position of trust to carry out investment fraud.

For example, the Securities and Business Investments Division of the Connecticut Department of Banking filed two separate actions against James E. Neilsen, a Certified Public Accountant (CPA) and former registered broker-dealer agent, who took advantage of his unfettered access to his CPA clients' sensitive financial information and abused his position of trust to twice scam his CPA clients through fraudulent securities offerings. Specifically, Neilsen set up Ulysses Partners, LLC to solicit investments in hedge funds on a compensated basis, selling approximately $10 million of securities to investors, the majority of whom were his accounting clients. Neilsen represented that the investment would generate a high rate of return, but failed to provide key disclosures concerning the risks involved, how the offering proceeds would be used, or that the securities were not registered under state law. Following an administrative hearing, the Connecticut Banking Commissioner found that between 2005 and 2012, Ulysses Partners and Neilsen violated the Connecticut Uniform Securities Act by selling unregistered securities to 33 individuals who invested approximately $7.4 million in Ulysses Partners. The Commissioner also determined that Neilsen violated the antifraud provisions of the Act by misrepresenting the anticipated rate of return on the investments, guaranteeing principal, and omitting any type of written disclosure or discussion of risks. The Commissioner noted that the misrepresentations and omissions were made to investors who had trusted Neilsen for years as their personal and business accountant. The Commissioner ordered a permanent Cease and Desist, the defendants to make full restitution, and Ulysses Partners and Neilsen to pay a $25,000 fine.

THE COMMISSIONER NOTED THAT THE MISREPRESENTATIONS AND OMISSIONS WERE MADE TO INVESTORS WHO HAD TRUSTED NEILSEN FOR YEARS AS THEIR PERSONAL AND BUSINESS ACCOUNTANT.

The Commissioner's order did not stop Neilsen, however. Just one year later, the Banking Commissioner again sanctioned Neilsen relating to a second fraudulent securities offering. In this matter, Neilsen entered into investment agreements with at least two individuals, one of whom was an accounting client, who invested at least $243,000 based on Neilson's representations that the investment would generate a 9 percent return with no risk of loss. Neilsen used investor monies to cover his personal expenses and failed to provide investors with written disclosures concerning investment risks and was again found to have violated the antifraud provisions of the Act. Neilsen also violated the Act by selling unregistered securities and by making a material misrepresentation to the agency in conjunction with its investigation. The Commissioner ordered a permanent Cease and Desist, the defendants to make full restitution, and Neilsen to pay a $300,000 fine. In addition, Neilsen was recently sentenced to eight years in prison by a federal Judge for the crimes he committed in connection with his fraudulent investment schemes.

The Washington State Department of Financial Institutions (DFI) also brought an action against a former accountant, Clarence Young, in 2015. In 1996, Young's accounting license was indefinitely suspended for, among other things, securities fraud, including the sale of unregistered securities, and failing to respond to a complaint by one of his clients. After his accounting license was suspended, however, Young continued to operate a tax consulting business. Young solicited his tax consulting business clients and others for investments in a feeder fund called Safeguard Capital, LLC. As detailed by the Washington Securities Administrator, "Young's investors were often his clients from his tax consulting business. The transactions he entered into with them were often based more on the trust clients had in Young than on substantive information about the investments." Young guaranteed investors a return of 18-to-24 percent on their investments, and represented that there was no risk. Young raised $2.2 million in investments for Safeguard. Rather than use the money as represented, Young used the majority of the money to fund his personal business and to make Ponzi scheme payments to other investors.

In January 2013, DFI entered charges against Young for securities fraud, sale of unregistered securities, acting as an unregistered salesperson, and acting as an unregistered investment advisor. In May 2013, the securities division entered into a consent order with Young. In 2015, Young pleaded guilty to 10 counts of securities fraud. The sentence imposed by the trial court, six months of work release followed by six months of home detention and payment of $1,264,802, was successfully appealed by the State based on the unjustifiable downward departure from the applicable sentencing guidelines. As a consequence, the appellate court has remanded the case to the trial court for resentencing within the standard range.

Michael Kwasnik, an estate planning attorney licensed in Pennsylvania and New Jersey, also used his position of trust as an attorney to gain the confidence of elderly victims and perpetrate an approximately $10 million fraudulent scheme. According to an action brought by the New Jersey Bureau of Securities, Kwasnik and his co-conspirators fraudulently offered and sold investments to 73 elderly victims that he falsely claimed were safe, secure, and guaranteed to earn a 12 percent annual return. Kwasnik told investors that investment funds would be used to purchase life insurance policies and beneficial interests in irrevocable life insurance trusts. Rather than investing the funds as promised,

YOUNG'S INVESTORS WERE OFTEN HIS CLIENTS FROM HIS TAX CONSULTING BUSINESS. THE TRANSACTIONS HE ENTERED INTO WITH THEM WERE OFTEN BASED MORE ON THE TRUST CLIENTS HAD IN YOUNG THAN ON SUBSTANTIVE INFORMATION ABOUT THE INVESTMENTS.

Kwasnik used investment funds to pay existing investors and to transfer money to himself, his family members, his co-conspirators, and his law firm. A civil action brought by the New Jersey Bureau of Securities resulted in a judgment that ordered Kwasnik to pay $8.6 million in full restitution for the benefit of defrauded elderly investors and a $3.5 million penalty. The Court found that Kwasnik took advantage of his attorney-client relationships to sell the fraudulent investments, and abused his position as legal trustee to effect the transactions on behalf of his trust clients.

Earlier in 2015, Kwasnik pled guilty to criminal securities fraud in an action brought by the Delaware Investor Protection Unit for a similar scheme. There, Kwasnik falsely told Delaware investors that Capital Management of Delaware was in the business of buying and selling life settlements. Rather, the true business of Capital Management was to expand the fraudulent scheme that Kwasnik was operating in New Jersey and Pennsylvania

THE COURT FOUND THAT KWASNIK TOOK ADVANTAGE OF HIS ATTORNEY-CLIENT RELATIONSHIPS TO SELL THE FRAUDULENT INVESTMENTS AND ABUSED HIS POSITION AS LEGAL TRUSTEE TO EFECT THE TRANSACTIONS ON BEHALF OF THIS TRUST CLIENTS.

commingled with that of Kwasnik's prior investors, misdirected into the client trust account of Kwasnik's law firm, and used to pay obligations owed to earlier investors and to satisfy preexisting debts of various Kwasnik-controlled entities. When Kwasnik's scheme collapsed, investors lost the entirety of their principal. In connection with his plea of guilty to securities fraud in Delaware, Kwasnik agreed to: pay more than $300,000 in restitution to three Delaware investors, affirmatively divulge his conviction to any future employer, investor, or business partner, and a 10-year bar from the securities industry.

Senior Fraud

Senior protection continues to be a primary focus of NASAA. In addition to passing the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation, a number of recent successful enforcement actions brought by NASAA U.S. members highlight state securities regulators' commitment to protecting senior investors. In addition to the Kwasnik matters in New Jersey and Delaware, highlighted above, the cases below from Minnesota and Missouri provide additional examples of the important work being done by state securities regulators to protect our seniors.

For example, Sean Meadows, a licensed insurance producer, and his financial planning and asset management firm, Meadows Financial Group LLC (MFG), operated a long-term Ponzi scheme in which Meadows stole more than $13 million from at least 100 individual victims – many of them seniors who lost their life savings. A joint investigation by the Minnesota Commerce Fraud Bureau and federal authorities resulted in Meadows being sentenced to 25 years in prison. Between 2007 and 2014, Meadows lured victims into removing funds from their retirement and other financial accounts by promising high rates of return in insurance and investment products when, in fact, he did not invest their funds. Instead, Meadows used money from new investors to make interest and/or principal repayments to existing investors. He also used the illicit proceeds of the Ponzi scheme to pay for personal expenses and bankroll his own extravagant lifestyle, including: making "salary" payments to himself; making payments to his spouse; paying expenses on personal investment properties; paying personal credit card bills; buying a car; traveling to Las Vegas; gambling at various casinos and online; and spending more than $135,000 at adult entertainment establishments.

AMONG THE VICTIMS DEFRAUDED BY MEADOWS WERE SENIOR CITIZENS, AND THE DISABLED, POOR OR TERMINALLY ILL. VICTIMS WERE LEFT IN FINANCIAL RUIN BECAUSE THEY LOST THEIR RETIREMENT FUNDS AND HOMES, THEIR ABILITY TO SUPPORT THEIR FAMILIES AND, IN ONE CASE, EVEN THE ABILITY TO PAY FOR CANCER TREATMENTS.

Among the victims defrauded by Meadows were senior citizens, and the disabled, poor or terminally ill. Victims were left in financial ruin because they lost their retirement funds and homes, their ability to support their families and, in one case, even the ability to pay for cancer treatments. Sadly, Meadows also had convinced many of the victims to pull money out of tax-deferred qualified accounts to "invest" with him, falsely assuring them that these would be tax-free rollovers when they were not. To cover up his scheme, he had also convinced his clients to have him prepare their income tax returns. He then filed fraudulent tax returns or, in some cases, did not file returns at all. As a result of Meadows's deceit, the victims not only lost their retirement savings; they also incurred significant tax liabilities.

The Securities Division of the Missouri Secretary of State's Office similarly shut down an investment scheme targeting senior investors run by Joanna L. Rich, an insurance agent associated with Financial Solutions Group, and FSG Fundraising, LLC (FSG). Rich collected in excess of $249,000 from at least seven investors – at least two elderly and one disabled – who were promised an unrealistically high 10 percent annual return and a 10 percent premium bonus. She told investors that the investment funds would be used for the startup costs of FSG and that the initial term would be three years to allow FSG to become profitable. Rich also provided some investors with false quarterly statements—on Financial Solutions Group letterhead—reflecting growth in the investors' funds. However, FSG was not actually making any profit to pay investors.

Rich and FSG did not use the investor funds for FSG purposes. Instead, Rich commingled investor funds with her personal funds and used them for personal expenditures, including payments to her son and the owner of Financial Solutions Group, cash withdrawals, and debit card purchases at businesses such as Ameristar Casino Resort and Spa, and for tickets to Chicago White Sox games. The Missouri Order requires Rich to pay restitution in the amount of $286,878 to the defrauded investors and to pay civil penalties in various amounts ranging from $1,000 to $25,000 for each violation of the Missouri Securities Act.

NASAA

Organized in 1919, the North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

In the United States, NASAA is the voice of state securities agencies responsible for efficient capital formation and grass-roots investor protection. Their fundamental mission is protecting investors who purchase securities or investment advice, and their jurisdiction extends to a wide variety of issuers and intermediaries who offer and sell securities to the public. NASAA members license firms and their agents, investigate violations of state and provincial law, file enforcement actions when appropriate, and educate the public about investment fraud. Through the association, NASAA members also participate in multi-state enforcement actions and information sharing.

For more information, vist: www.nasaa.org

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