FINRA and NASAA Proposals to Protect Vulnerable Customers

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The Financial Industry Regulatory Authority (FINRA) is seeking comments on proposed rules addressing financial exploitation of (i) seniors (age 65 or older), and (ii) other adults with mental or physical impairments that prevent them from protecting their own interests (collectively, “vulnerable adults”).

FINRA’s proposal would (i) require member firms to make reasonable efforts to obtain information from their customers for a “trusted contact person” and (ii) permit, but not require, firm supervisory, compliance, or legal personnel to place temporary holds on disbursements from the accounts of vulnerable adults where there is a reasonable belief that financial exploitation is occurring, has been attempted, or will be attempted.

Imposing a temporary hold (15 business days maximum, plus one 15-day extension) would require the firm to immediately initiate an internal review of the facts and circumstances. It would also have to notify certain parties, including the trusted contact person, unless the firm reasonably believes that person is implicated in the exploitation.

The North American Securities Administrators Association, Inc. (NASAA) recently proposed similar model legislation. Among the differences: NASAA’s proposal would (i) apply to investment adviser firms, as well as broker-dealers, and (ii) provide for notification of exploitation to be given to adult protective services authorities and to the state securities commissioner, rather than to a trusted contact person.

Both proposals address delaying “disbursements” from a vulnerable adult’s “account” held by the firm. This terminology implies how the proposal could be consistent with the Investment Company Act requirement that registered investment companies pay redemption proceeds within seven days. Specifically, redemption proceeds could be paid within that period to the brokerage or advisory account, but held there temporarily in accordance with the proposal.

The language similarly seems to indicate that the proposals would not apply to variable products and mutual funds held directly though the issuer, because they are not held in a brokerage or advisory account.