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## **SENIOR INVESTOR PROTECTION LAWS, RULES & REGULATIONS**

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APRIL 2019

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# The Reason for Concern

>50%

## Familiar Faces

- Unfortunately, more than half of all senior financial exploitation is perpetrated by **friends, family members, or caregivers**. This exploitation can be wide-ranging, is often the most difficult to prevent, and is the most under-reported form of senior financial exploitation. A victim of such exploitation may even seek to cover-up such abuse out of feelings of guilt, shame, or loyalty.

- A Metlife study found that seniors lose at least **\$2.9 billion** each year to **financial exploitation in media-reported cases\***

\$2.9 B

1 in 44

- The National Adult Protective Services Association estimates that only **1 in 44 cases of financial abuse are ever reported to the authorities**

1 in 5

- It is estimated that **1 in 5** Americans aged 65 or older have been **victimized by financial fraud**

# New FINRA Rule

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## Regulatory Notice 17-11

- Issued Mar. 2017
- Creates a new Rule 2165 (A Report & Hold Rule) & amends Rule 4512 (re: Trusted Contact Forms)
- The new rules became effective February 5, 2018

# New FINRA Rule



## Regulatory Notice 17-11

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## New Rule 2165

- Provides a safe harbor from FINRA Rules 2010, 2150 and 11870, allowing firms to temporarily hold suspicious disbursements for up to 15 days (or longer if ordered by a court or state agency of competent jurisdiction).
- Focuses on disbursements, but could be expanded to include transactions.
- Includes recordkeeping and compliance requirements.
- Reasonable basis to believe financial exploitation has occurred, is occurring, has been attempted or will be attempted
- No requirement to hold - only a safe harbor

# New FINRA Rule



## To put the hold in place:

- Notify the trusted contact and all parties authorized to transact business on the account of the hold and the reason for the hold within two days
- Do not need to notify the trusted contact or any party who the firm believes is exploited the customer
- Recordkeeping requirements of the disbursement requests, and findings with regard to the potential exploitation that led to the hold
- Need procedures regarding the identification, escalation and reporting of matters related to financial exploitation

# New FINRA Rule

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## Amendments to Rule 4512

- Requires firms to attempt to collect trusted contacts for new and existing clients, as well as attempt to regularly update that information
- Only applies to non-institutional accounts

# New FINRA Rule

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## Can use trusted contact name for:

- Confirming customer's current contact information
- Health status
- Identify any legal guardian, executor, trustee or holder of a power of attorney
- Or otherwise permitted under the rule

# Additional FINRA Rules and Resources



## Senior Investors Webpage

- [www.finra.org/industry/senior-investors](http://www.finra.org/industry/senior-investors)
- Contains information on Rules, Notices, Guidance, News Releases, Investor Education and Examinations

## FINRA-Identified Rules Relevant to Senior Investors

- **Regulatory Notice 16-12:** Guidance on Firm Responsibilities for Sales of Pension Income Stream Products
- **Regulatory Notice 11-52:** Obligations Regarding Supervision of Registered Persons Using Senior Designations
- **Regulatory Notice 07-43:** Obligations Regarding Senior Investors and Highlighting Industry Practices to Serve Senior Customers

## Available FINRA Guidance Topics

- 2165/4512 FAQs and Podcasts on Senior Designations, FINRA's 2015 Exam Priorities, Protecting Senior Investors and Considerations for Working with Seniors.





# State Report & Hold Laws

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## Laws:

**Alabama** – Act No. 2016-141

**Alaska** – Chapter 65 SLA 2018

**Arkansas** – Act No. 668 (2017)

**Colorado** – Chapter 289, Session Laws of 2017

**Delaware** – Title 31, Chapter 39 & Title 6 Delaware Code (2015/2018)

**Indiana** – Act. No. 221 (2016)

**Kentucky** – Acts 2018, Ch. 127

**Louisiana** – Act No. 580 (2016)

**Maryland** – Ch. 838, 2017

**Minnesota** – Ch. 161, Laws of 2018

**Mississippi** – Sec. 75-71-413 MS Code of 1972 (2017)

**Missouri** – RSMo 409.600-409.630 (2015)

**Montana** – Chapter 84 (2017)

**New Mexico** – Chapter 106 of 2017

**North Dakota** – New Section in Ch. 10-04-08.5, Code of ND (2017)

**Oregon** – Chapter 514, 2017 Laws

**Tennessee** – Pub. Ch. 424 (2017)

**Texas** – Art. 581-45 Vernon's TX Civil Statutes (2017)

**Utah** – Sec. 61-1-201 – 206 Utah Code Annotated

**Virginia** – Sec. 63.2-1606(L) (2019)

**Washington State** – Ch. 133, Laws of 2010



## Rules:

**Vermont** – Regulation S-2016-01



\* Arizona SB 1483 has passed its chamber of origin.

# Federal Laws

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- Senior Safe Act
  - Provide broader protections for firms that report suspicions of elder financial exploitation to State and Federal regulators and investigators
  - This is notably different from the 'fraud' exemption in Gramm-Leach-Bliley and Regulation S-P
  - Was signed by President Trump May 24 and is now Public Law 115-174.

# Federal Legislation

- **Senior Safe Act**
  - Provide broader protections for firms that report suspicions of elder financial exploitation to State and Federal regulators and investigators
  - This is notably different from the ‘fraud’ exemption in Gramm-Leach-Bliley and Regulation S-P
  - Was signed by President Trump May 24 and is now Public Law 115-174.
  
- **Elder Abuse Prevention & Prosecution Act (S. 178)**
  - Signed into law October 18, 2018; P.L. 115-69
  - Increases training for federal investigators and prosecutors, equip each judicial district with one prosecutor having expertise with elder abuse cases, support state efforts and interstate initiatives to combat elder abuse, and overall strengthen the ability of our justice system to respond when abuse is identified – including when B-Ds report suspected abuse.
  - Sponsored by Senator Grassley