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Combating Elder Financial Abuse Remains Priority for Federal Government

by David C. Franceski Jr. and Samantha Kats

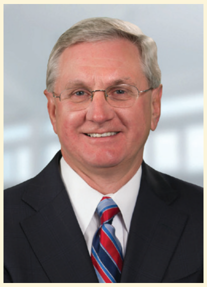
On Dec. 5, the Senate Banking Committee approved the Senior$afe Act, which was part of a larger bill, the "Economic Growth, Regulatory Relief and Consumer Protection Act," S. 2155. The original bill text is available here (https://www.banking.senate.gov/public/_cache/files/96d07158-bf57-4f2e-9bfe-888db5dad6ab/7EC24EE731A96E317839101D6AE8FF34.sil17981.pdf). During a full committee markup of the bill, U.S. Senator Mike Crapo, Chairman of the U.S. Senate Committee on Banking, Housing and Urban Affairs, remarked that "[t]he bill has received widespread support from commentators, regulators, businesses, and institutions representing millions of hard working Americans and consumers, including over 10,000 community bankers, more than 100 million credit union consumer members, and thousands of small business owners and entrepreneurs" and that "[t]he passage of this legislation holds real promise for families across America." The House Financial Services Committee approved a similar elder-abuse bill in October.

The Senior$afe Act encourages financial services professionals to identify suspected financial exploitation and report suspected financial abuse by granting immunity from any civil or administrative liability to certain qualified individuals (as defined by the Act) when the disclosure of any suspected exploitation is made in good faith and with reasonable care to a state financial regulatory agency, including a state securities or law enforcement authority and a state insurance regulator, and other appropriate governmental authorities. A "covered financial institution" is defined by the Act as any credit union, depository institution, investment adviser, broker-dealer, insurance company, insurance agency or transfer agent.

How to detect, address and prevent elder financial abuse has been of great concern to financial services professionals, including brokers, investment advisers and financial planners who find themselves on the "front lines" dealing directly with an aging investor population. The issue has received a great deal of attention from the securities industry and its regulators alike. For example, on Nov. 28, Philadelphia Federal Reserve Bank President Patrick Harker delivered opening remarks at the Bank's conference on "Aging, Cognition, and Financial Health: Building a Robust System for Older Americans." The two-day event focused on the issue of financial exploitation of older Americans and how institutions can build a more robust, industrywide system capable of enhancing elder financial security and preventing financial abuse and fraud.

In an attempt to strike a balance between customer protection and customer privacy, Financial Industry Regulatory Authority, Inc. (FINRA) Rule 2165, which goes into effect in February 2018, institutes certain safeguards and processes to identify and prevent elder financial abuse. FINRA Rule 2165 will allow broker-dealers to place a temporary hold on disbursements from brokerage accounts if there is a reasonable belief of elder financial exploitation. However, like the Senior$afe Act, these safeguards do not completely resolve sometimes difficult customer relation and other intergenerational issues. For example, while these legislative and regulatory changes provide immunity for reports to federal, state or local agencies, absent the customer's willingness to designate a trusted third party, they do not protect investment professionals when reporting to, or attempting to seek assistance from, private parties such as caregivers, heirs or other family members — who might be part of the solution, but a source of the problem as well. Nor has any of the recent changes provided much guidance on whether or under what circumstances industry professionals may be liable for failing to make the reports that the statutes, rules and regulations now sanction.

While the legislation could reach the Senate floor early next year, the level of support it would garner in the House is unpredictable. Many states already have, and others continue to enact, similar legislation aimed to improve detection, encourage reporting, and better protect elders from financial exploitation. Though the new Act goes far to protect seniors, and to assist the financial services industry with that protection, it is likely that elder financial abuse will likely remain a focus of legislative and regulatory change — at the federal, state and local level — for some time.



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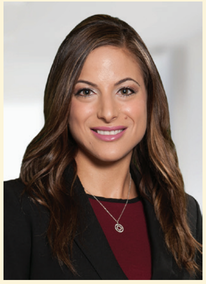

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