

STATEMENT

OF

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ON BEHALF OF THE FINANCIAL SERVICES ROUNDTABLE

BEFORE THE

SPECIAL COMMITTEE ON AGING

OF THE U.S. SENATE

AMERICA'S INVISIBLE EPIDEMIC:

PREVENTING FINANCIAL ELDER ABUSE

NOVEMBER 15, 2012

The Financial Services Roundtable¹ (the “Roundtable”) and BITS appreciate the opportunity to share our thoughts with the members of the Senate Special Committee on Aging regarding the financial exploitation of older Americans and actions we can collectively take to reduce that exploitation.

The financial services industry is a key part of the circle protecting older Americans from financial fraud and exploitation. When employees observe signs of potential exploitation, they can work with families, caregivers, social service agencies and law enforcement to prevent, detect, and help investigate and prosecute the individuals who engage in fraud.

The Roundtable and its members are committed to encouraging their employees comply with high standards of conduct when providing financial advice to all customers, including older Americans and their families. Helping ensure a secure retirement for millions of Americans is central to the business and the mission of the financial services industry.

THE PROBLEM

By 2030, the number of Americans aged 65 and older is projected to double to 71 million, roughly 20 percent of the U.S. population.² In some states, fully a quarter of the population is likely to be aged 65 and older.³ Unfortunately, this increase in the aging population creates a potentially large pool of potential victims for financial exploitation.

It is sad, but true, that the most frequent perpetrators of financial abuse are family members, who by some estimates commit nearly 75% of crimes,⁴ and professional criminals. It is also important to note that financial institutions are often the first line of defense against this financial exploitation.

Since many older customers prefer to conduct transactions in person, financial services employees can be the first to detect changes in an older customer’s behavior. Signs of exploitation of an elderly customer may include unusual transactions or changes to accounts, unpaid bills, changes in spending patterns, new individuals accompanying the customer to a bank facility, and missing property. When these and other signs are detected, and an investigation suggests that exploitation is taking place, financial institutions can help the

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$85.5 trillion in managed assets, \$965 billion in revenue, and 2.3 million jobs.

² The State of Aging and Health in America, Centers for Disease Control and Prevention (CDC) and The Merck Company Foundation, 2007, http://www.cdc.gov/Aging/pdf/saha_2007.pdf.

³ *The State of Aging and Health in America*, Centers for Disease Control and Prevention (CDC) and The Merck Company Foundation, 2007, http://www.cdc.gov/Aging/pdf/saha_2007.pdf.

⁴ <http://www.consumerreports.org/cro/money/consumer-protection/preventing-financial-elder-abuse/overview/index.htm>

customer take action to protect his or her assets. Financial institutions also work with agencies such as Adult Protective Services (APS), local law enforcement and prosecutors, many times as part of local or regional task forces focused on elder abuse prevention and prosecution. Institutions also report suspected abuse via the Suspicious Activity Reports (SARs) filed with the Financial Crimes Enforcement Network (FinCEN), an agency of the United States Department of the Treasury.

Following the filing of SARs, institutions may be contacted by law enforcement who are investigating the case. Institutions actively work with law enforcement after filing all legally required documents. Institutions also participate in regional partnerships that involve law enforcement of all levels. During these meetings, institutions will share trends and suspects. This allows for institutions and law enforcement partners to share best practices. Through this active engagement and partnership, cases are able to be more quickly resolved.

For decades, financial institutions have been at the forefront of fraud detection utilizing sophisticated technology, modeling, training and education. Because of these proactive measures, they are often the first to detect patterns associated with fraud. Using a variety of safeguards, financial institutions make every attempt to ensure the reliability and security of financial transactions as well as protect financial privacy. In fact, financial institutions often exceed the standards set by financial regulators in order to protect their customers, shareholders and employees better.

Education – of employees, customers and other stakeholders – is critical for preventing financial abuse of all customers – including more vulnerable ones such as older Americans. Many financial institutions have extensive programs to educate employees and customers on detecting abuse and steps to secure accounts from the lure of fraudsters. Financial institutions also work closely with APS, law enforcement and prosecutors to educate those entities on patterns of fraudulent activity and help identify individual cases of potential fraud. Financial institutions also work closely with community organizations to host panel discussions and community events to educate seniors and their caregivers about the risk of elder financial abuse. These efforts provide older American and their advocates education and resources to not only recognize financial elder abuse, but to also take steps to proactively protect oneself and ones assets through, for example, proper document disposal and identity theft prevention, and reports of the crime when it occurs.

Employees and customers who are better educated about fraudulent behavior and preventing fraud are more likely to take fraud prevention measures. An example of the Roundtable member's education efforts is a white paper produced by the Roundtable's BITS group entitled, *"Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation,"* which helps financial institutions and their customers identify and combat elder abuse.⁵

⁵ BITS - "Protecting the Elderly and Vulnerable from Financial Fraud and Exploitation"

The Roundtable also partnered with the Administration for Community Living/Department of Health and Human Services and the Consumer Financial Protection Bureau to support the June 14, 2012 White House Office of Public Engagement symposium in recognition of the 7th annual World Elder Abuse Awareness Day by providing financial industry speakers for the panel addressing the prevention of elder financial abuse.

Recognizing the scope of this issue, the Roundtable's members believe it is important to continue to focus on it and to bring resources to bear. To that end, the Roundtable's members have formed a working group to focus on the issue of preventing financial abuse of the elderly. Further recognizing that solutions will require a multi-faceted approach, the Group's members consist not only of financial institutions, but additionally of a collaborative cross-section of federal agency representatives, representatives from various adult protective services organizations, and academics focused on the area of elder abuse.

The Elder Working Group currently has identified two key projects on which it will concentrate. These are:

- Develop a structure/syllabus for training financial institution consumer-facing staff and all new hires on elder fraud trends and internal procedures for reacting to suspected elder financial abuse, including engaging Adult Protective Services and law enforcement. This work will focus on building on work done previously, will incorporate new learnings and research and broaden the educational base for employees. Once completed, the work will be shared openly across the financial services sector.
- Work with financial institutions with strong education programs to develop a publicly available awareness and education program to be made available to all financial institutions.

CHALLENGES AND IMPEDIMENTS

As we have engaged in our efforts regarding prevention of elder financial abuse and based on the experiences and feedback of financial institutions, we have identified a number of areas where potential impediments exist to improving prevention. For many of those, the assistance of the agencies forming the Elder Justice Coordinating Council (EJCC), either directly or in concert with other non-EJCC agencies, would be helpful to clarify concerns or remove impediments. On October 11, 2012, I had the opportunity to present these ideas to the agencies involved in the EJCC at its inaugural meeting. The impediments and possible solutions include:

- Clarify the permissibility of age-based fraud monitoring. As noted previously, financial institutions utilize sophisticated fraud detection technology and modeling in their attempts to prevent and identify potential fraudulent activity in an attempt to protect customers. An added layer of sophistication could be to segregate their elder customers' activities for special screening. Many financial institutions are concerned, however, that segregating their customer population for this purpose could be

interpreted to place them in violation of existing age discrimination laws and, therefore, put the institution at risk for potential fines or regulatory actions.

It would be extremely beneficial if the involved EJCC agencies, particularly the Department of Justice, could clarify permissibility of age-based fraud monitoring. If such segregation is currently permissible, to assuage the concerns we have heard, a written opinion of the permissibility would be extremely helpful. If, in fact, it is considered a violation of current anti-discrimination laws to segregate this population for fraud monitoring purposes, we encourage the EJCC to undertake an effort to pursue legislative action to allow for an exception.

- Authority to authorize a protective hold on a suspicious transaction. One significant challenge financial institution employees encounter is situations where an elderly customer wants to perform a transaction (e.g., a withdrawal, a request to transfer funds) in a situation where the employee strongly suspects or even knows that fraud is involved. This clearly creates a conundrum pitting the financial institution's contractual obligation to carry out its customers and instructions and the financial institutions' desire to prevent the elderly customer from being defrauded.

There are a few methods that are suggested for dealing with this issue:

- Working with CFPB and Treasury create an option allowing institutions to put a minimal hold on the transaction pending the sending of an alert of APS and APS discussing the situation with the customer. It will likely be necessary for CFPB and Treasury to work with the states to implement this suggestion.
 - Working collaboratively with input from the U.S. Department of Justice, U.S. Postal Inspection Service, Federal Trade Commission and other agencies along with input from financial institutions, create and maintain a list of known fraudulent actors that can be used to "convince" elders of their involvement in a fraudulent situation.
 - Leverage the work already underway and led by the Consumer Financial Protection Bureau to create a list of local and regional APS services into a shareable database that financial institutions could use to understand who to contact that might be helpful in discussing these types of situations with involved elders. Along with creating a database for contacts, it will be necessary to further clarify the type of information institutions are legally able to share with APS regarding their older customer.
- Another substantial challenge occurs when an individual with a duly executed Power of Attorney to act on behalf of an elder is suspected of trying to perpetrate fraudulent activity or activity not in the best interest of the elder. Duly executed Powers of Attorney give the holder the legal right to act on behalf of the customer. This essentially creates the same conundrum for the financial institution as noted in the previous point.

There are a series of actions we would ask the EJCC members to consider regarding this issue. They include:

- Powers of Attorney laws and regulations vary by state and, particularly in the case of Durable Powers of Attorney, can involve granting rights to the agent even after the principal becomes incapacitated. While the agent is obligated to exercise due care and protect the principal, state law is not uniform with respect to the specific responsibilities of an agent with regard to financial transactions, particularly when the principal is an elder. The development of uniform state laws and a Uniform Power of Attorney would be very helpful. Study of the feasibility and benefits of having a uniform Power of Attorney, particularly one for situations in which the principle is an elder should be undertaken.
 - Select agencies – most likely U.S. Department of Health and Human Services, Social Security Administration, CFPB, U.S. Department of Justice, the Federal Trade Commission and the U.S. Department of Veterans Affairs – should consider working collaboratively to develop educational materials that explain clearly to those agents with Powers of Attorney their financial responsibilities and provide specific examples of what are considered abusive behaviors.
 - The U.S. Department of Justice could undertake a study of existing criminal statutes that apply to financial abuse of elders. This should include both federal and state level statutes with the goal to develop a model criminal code applicable to this area that strongly disincentivizes criminal actors and those acting as agents from taking advantage of the elderly.
- Financial institutions are sometimes concerned with the liability they or their employees might incur in situations where they suspect and report elder abuse – particularly if it is a situation in which it is ultimately determined that a fraud was not involved. Today, certain states require the reporting of even suspicions of fraud, but that reporting is not uniform on a national level and statutory hold harmless provisions to protect the reporter seem far from consistent.

The Council should work toward legislative action that would result in a national reporting statute that provides uniform electronic reporting requirements to a single report point which would disseminate the information (or otherwise make it available) to state and local agencies, as well as uniform hold harmless protections for reporting parties. Additionally, the importance of federal and state agencies such as the CFPB, SEC, FINRA, and NSAA, etc., to coordinate their efforts in addressing elder financial abuse can ensure the avoidance of conflicting rules and regulations, which themselves would potentially harm individual clients. This should also include a definition of those individuals who are protected by the requirements, as in some states fraud of vulnerable adults follow the same requirements as fraud of the elderly.

- Confusion of requirements regarding to whom to report the abuse and under what circumstances.

FinCEN, a part of the U.S. Treasury, issued an advisory on February 22, 2011 that addresses the reporting of actual or suspected elder financial abuse on Suspicious Activity Reports (SARS).⁶ This provided financial institutions with guidance on reporting specific to SARS' requirements; however, the reporting of elder financial abuse often goes beyond that type of reporting. Reporting would likely include reporting of situations to Adult Protective Services or similar agencies as well potentially, depending on the circumstances, to local law enforcement. Today, however, the structure of adult protective services type agencies is diffused across the country. Some locations have more centralized statewide or regional agencies while others structure such agencies very locally. Determining the correct agency for reporting is often difficult. Law enforcement capabilities to deal with such reports often vary as well. In addition, today with law enforcement often done at the local level, it is often difficult to synthesize information across jurisdictions to identify when elders in different locations may be being subjected to scams and fraudulent activity that relates to the same set of criminal actors.

To assist with overcoming these issues, we suggest the following actions:

- The CFPB is currently working with various constituencies to develop a database of regional and local Area Agency on Aging across the United States. Making that database accessible to financial institutions would facilitate those institutions ability to know and contact the correct agency.
- Recognizing that local law enforcement lacked skills in investigating cybercrime, in 2007, the Department of Homeland Security, the United States Secret Service, the Alabama District Attorneys Association, the State of Alabama, and the city of Hoover, Alabama partnered to create the National Computer Forensics Institute (NCFI). This partnership provides state and local law enforcement officers the training necessary to conduct basis electronic crimes investigations. Creating a similar model to train state and local law enforcement personnel the training necessary to conduct investigations of elder abuse could have significant merits. Short of such a large effort, creating and providing to local law enforcement bodies an educational opportunity through such options as written best practices, webinars and seminars on the subject would be beneficial.

Note that these same concepts can be generally applied as well to local prosecutorial authorities, who sometimes also lack the knowledge and experience requisite to the successful prosecution of those who prey financially on the elderly. Similar training programs and best practices can also serve this community well.

- The CFPB is currently working to establish state and regional coalitions of APS, law enforcement, prosecutors and financial institutions that can work together on the issue of elder abuse. We encourage continued expansion of this effort

⁶ See http://www.fincen.gov/statutes_regs/guidance/html/fin-2011-a003.html.

and offer our services to assist in connecting our Roundtable members into these coalitions.

- While SARS reporting is working well today, a significant improvement can be made by specifically adding “Elder Financial Abuse” as a category in Section 35 of the SARS Reporting Form. This would allow for easier collation of such activity and facilitate cross matching of potential criminal actors within this area.
- Enhanced financial literacy to empower further consumers, including older Americans, to make sound financial decisions.

Financial literacy is one of the highest priorities for the Roundtable and its members at the grass roots and at the national policy level. In 2011, Roundtable member companies conducted more than 45,600 financial literacy projects around the country to empower further thousands of consumers to make sound financial decisions.

As we noted earlier, as a part of the efforts of its Elder Working Group, the Roundtable has committed to work on two projects (i.e., develop a structure/syllabus for training financial institution consumer-facing staff and to develop a publicly available awareness and education program to be made available to all financial institutions).

We would certainly welcome the engagement of any of the departments or agencies represented on the EJCC in this effort – either in development or ultimately in distribution of the publicly facing awareness and education materials developed. We believe a national-level awareness campaign targeting elder Americans and their family members would provide long-lasting benefits in helping to reduce elder financial abuse.

- One last area of potential improvement involves the licensing of financial professionals who serve the elder community. In its August 20, 2012 letter to the CFPB regarding CFPB’s “Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018],” the Roundtable mentioned another key area to reduce financial abuse of elders. It noted that an effort to make elders more aware of the licensing of financial professionals coupled with an effort by federal and state agencies and professional organizations’ role in developing best practices for the training and licensing of financial professionals would have benefits. The Roundtable’s comments on this last area are excerpted into Appendix A of this document.

CONCLUSION

We appreciate the opportunity to share our sector’s focus on the issue of financial abuse of the elderly. We are committed to continuing to work on these issues to protect older Americans.

As noted, we recently shared these thoughts with the Elder Justice Coordinating Council. The challenge of reducing elder abuse can only be resolved by continued focus on the issue by all relevant parties, including financial institutions, families of elders, government agencies and

legislators. Only through this continued commitment will we be able to protect our seniors from financial abuse. We recognize that the ideas we have outlined in this testimony are, in many cases, concepts and suggestions. They are a starting point for this discussion. We recognize there are various methods to approach these issues and look forward to continuing to work with you and other key constituencies on these issues.

Appendix A

Excerpt from August 20, 2012 letter to the CFPB regarding CFPB's "Request for Information Regarding Senior Financial Exploitation [Docket CFPB-2012-0018]"

- **Consumers Should Seek Financial Advice Only From Licensed Financial Professionals, and the CFPB Should Work with Federal and State Agencies and Professional Organizations to Develop Best Practices For the Training of These Professionals**

The financial services industry has played a vital role in expanding retirement security for millions of Americans for the last 100 years. The industry currently manages more than \$17 trillion in retirement assets, which represents 36% of all U.S. household assets.⁷ The U.S. retirement market is projected to grow to nearly \$22 trillion by 2016,⁸ a 30% increase in retirement savings over four years.

It is important that consumers of all ages seek professional assistance to prepare for and make major financial decisions involving investments, wealth planning, and retirement. When making these decisions, consumers should seek out individuals who are licensed under federal and/or state law.

The Roundtable believes that consumers should only hire properly licensed investment professionals. Federal law regulating securities brokers, securities dealers, and investment advisers provides strong and effective protection for all consumers, including older Americans. The Securities and Exchange Commission, together with securities self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board, implement the registration and regulatory régime under federal securities law. These protections are complemented at the state level by laws designed to protect consumers from investment fraud. A similar registration and regulatory structure exists for futures professionals and firms, which are subject to oversight by the Commodity Futures Trading Commission, National Futures Association and other futures self-regulatory organizations. Additionally, state insurance commissioners regulate insurance agents in their respective jurisdictions.⁹

⁷ <http://www.ebri.org/research/?fa=genretire>

⁸ <http://www.bankinvestmentconsultant.com/news/cerulli-predicts-retirement-market-will-exceed-22-trillion-by-2016-2677132-1.html>

⁹ The most common license for securities professionals is the Series 7 – General Securities Representative, and the most common license for commodity futures professionals is the Series 3 – National Commodity Futures. Depending on the nature of their activities, investment professionals may need the following licenses: (1) Series 6 – Investment Company Products/Variable Contracts Limited Representative; (2) Series 22 – Direct Participation Programs Limited Representative; (3) Series 31 – Futures Managed Funds; (4) Series 32 – Limited Futures; (5) Series 34 – Retail Off-Exchange Forex; (6) Series 42 – Registered Options Representative; (7) Series 52 – Municipal Securities Representative; (8) Series 62 – Corporate Securities Limited Representative; (9) Series 63 – Uniform Securities Agent State Law (NASAA); (10) Series 65 – Uniform Investment Adviser Law (NASAA); (11) Series 66 – Uniform Combined State Law (NASAA); and (12) Series 82 – Limited Representative, Private Securities Offerings.

We understand that a number of states and professional organizations have laws and programs that govern certifications and titles used by retirement professionals. While training that focuses on the specialized needs of older Americans may be valuable and useful, we urge the CFPB to partner with the financial services industry, federal regulators, financial industry self-regulatory organizations, state agencies and professional organizations in developing best practices for the training and certification of professionals who specialize in advising older Americans.